

SUBJECT: Authorizing and regulating poker gaming

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Kuempel, Thompson, Gutierrez, Hamilton, Menendez, Quintanilla

0 nays

3 absent — Chisum, Geren, Jones

WITNESSES: For — Vernon Harrison, Texas Card Players Association; Mike Lavigne, Poker Players Alliance; John R. Pitts, Amaya Gaming; Chris Jones; Brett Kimes; Michelle Lewis; Roy Thompson; (*Registered, but did not testify:* Joey Bennett, Alabama-Coushatta Tribe of Texas; Jennifer Brown, Ysleta Del Sur Pueblo Indian Tribe; Jim Brown, Texas Affiliation of Affordable Housing Providers; Meghan Garza-Oswald, Haven for Hope Homeless Campus; Brenda Harrison, Texas Card Players Association; William Elliott; Tex Flaniken; Carl Givens)

Against — Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; (*Registered, but did not testify:* Cindy Asmussen, Concerned Women for America; MerryLynn Gerstenschlager, Texas Eagle Forum)

On — Phil Sanderson, Texas Lottery Commission

BACKGROUND: Penal Code, ch. 47 prohibits many forms of gambling. It applies to the persons who do the illegal activity and makes the offense a class C misdemeanor (maximum fine of \$500).

Sec. 47.02(a) makes numerous activities a crime, including playing and betting for money or other things of value at any game played with cards, dice, balls, or any other gaming device. Sec. 47.02(b) establishes a defense to prosecution if the gambling occurred in a private place, no one received any economic benefit other than personal winnings, and except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants. Subsec.(c) lists other defenses to

prosecution, including those for other forms of gambling authorized by the state, such as the state lottery, pari-mutuel racing, and charitable bingo and raffles.

Other offenses relating to gambling include Penal Code sec. 47.04, which prohibits keeping a gambling place, and sec. 47.06, which makes possession of gambling devices, equipment, and paraphernalia a crime. These offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST:

CSHB 222 would legalize and regulate poker gaming in Texas. The gaming could be played live or on electronic poker tables. Persons conducting poker gaming would be required to have either a charitable operator's license or a commercial operator's license issued by the Texas Lottery Commission.

The Lottery Commission would be required to exercise strict control and close supervision over all poker gaming in Texas and to establish a poker gaming division to oversee the games. The bill would establish criteria for obtaining a license to operate poker gaming, establish a state tax on the operator's gross receipts for the games, dedicate the state tax to certain homeless and affordable housing programs, and establish penalties and offenses relating to the games.

The bill would take effect September 1, 2009, and the Lottery Commission would be required to adopt rules, develop applications and forms, and establish procedures to implement the bill by January 1, 2010.

Licenses. CSHB 222 would require all conductors of poker gaming to hold either a charitable operator's license or a commercial operator's license issued by the Lottery Commission. Poker gaming could be conducted only on premises or locations specified in an operator's license. The Lottery Commission could issue temporary licenses. Employees involved in poker and distributors and manufacturers of poker gaming equipment would have to be licensed.

Commercial operators. CSHB 222 would require commercial operators' licenses be issued to applicants that met requirements prescribed by the Lottery Commission and that held:

- a license or permit from the Texas Alcoholic Beverage Commission to sell or serve liquor for on-premises consumption or
- a license to conduct pari-mutuel racing issued by the Texas Racing Commission.

Commercial operator's licenses also would have to be issued to federally recognized Indian tribes with a reservation in Texas that met other Lottery Commission requirements. CSHB 222 would state that poker gaming authorized by the bill would be considered Class II gaming under the federal Indian Gaming Regulatory Act.

Holders of alcoholic beverage permits could not apply for a license unless they met certain thresholds for minimum payments of mixed beverage taxes. If an Indian tribe held a commercial operator's license the tribe would have to conduct poker gaming on its Texas reservation.

Holders of city or county licenses or permits for sexually oriented businesses would be prohibited from conducting poker gaming.

Charitable operators, charitable tournaments. The Lottery Commission would be authorized to determine criteria for charitable operator's licenses and would have to issue a license to applicants that met the criteria. The commission would be required to ensure that charitable operators used revenue from poker tournaments for charitable purposes. The bill details what would have to be included in operator's license applications and would give the commission authority to ask for additional information.

Licensed operators would be able to conduct charitable poker tournaments for the benefit of nonprofit organizations. Licensed operators would be required to get a license to hold a charitable poker tournament, and that license would be valid only for specified hours, dates, and locations.

Employee licenses. CSHB 222 would require persons acting as dealers in poker games be licensed by the commission, would establish criteria for those licenses, and would authorize the commission to set other criteria. The commission would be authorized to establish other employee's licenses as it determined necessary.

All employees who handled cash, other than those employed to sell or serve alcohol, would have to be bonded. Licensed individuals would have to wear badges during the gaming.

Manufacturers, distributors. CSHB 222 would require the commission to adopt rules for licensing those involved in the manufacturing of poker gaming equipment. Persons distributing poker gaming equipment to licensed operators would have to be licensed.

Application and license fees. The bill would establish a schedule of application fees for operators, employees, and other licenses. The commission would be authorized to increase the fees if the fees set in CSHB 222 did not cover the commission's cost of issuing licenses. The bill also would establish license fees, including \$1,000 for a charitable or commercial operator's license.

Poker gaming operations, Lottery Commission oversight. CSHB 222 would require the commission to adopt rules for the operation of poker gaming and would establish requirements for gaming operations and oversight by the Lottery Commission.

All rules for the games would have to be approved by the commission. The bill also would regulate the hours that poker gaming could be operated and would require operators to establish table limits. Buy-in fees would be capped at \$100, and tournament registration fees would be capped at \$30.

Players. Players would have to be at least 21 years old. People younger than 21 years old would be prohibited from playing, wagering, collecting communal pots, or being present during gaming at any premises or being employed as poker gaming employees. Operators could not serve complimentary alcoholic beverages to players.

Tables, equipment. The number of tables at the premises of a licensed operator would be capped at four, but the Lottery Commission would prescribe the actual number for a location. The commission would be required to develop, by rule, procedures for the approval of poker gaming equipment, and licensed operators could not use, sell, or distribute equipment that had not been approved.

The bill would establish criteria for electronic poker tables, including that the commission would have to be able to audit every event and action on a table. All poker gaming would have to be conducted using commission-approved chips or tokens or on an electronic poker table.

Electronic poker tables would be defined as tables that provided multiple player positions and allowed players to play against other players in the same poker game using electronic representations of cards and chips.

Video surveillance. Licensed operators would be required to provide video surveillance of the poker gaming, unless all the poker tables on the premises were electronic poker tables. The commission would establish rules for surveillance at charitable poker tournaments.

Rake for operators. Operators would be required to collect a fee on each hand played. The fee could not exceed 10 percent of the communal pot, with a maximum of \$4 per hand. Promotion bonus fees could not exceed \$1 per hand. A portion of the promotion bonus fee would be remitted to the state.

Pari-mutuel tracks that conducted poker would have to deposit 2 percent of their gross receipts from poker gaming in a purse fund. Other than a limited amount authorized by the Racing Commission for administrative expenses, those funds could be used only to promote the Texas racing industry by providing money for competitive purses. The Racing Commission would have to adopt rules to govern the use of these funds.

Books, records, audits. Licensed operators would be required to keep books and records in a manner that clearly showed the total amount of gross receipts and total deposits made by all players. They also would have to have internal audit and control systems that met the requirements in CSHB 222.

The commission would be authorized to conduct investigations and audits and to file complaints on licensees relating to the gaming. The bill outlines the hearing process that would be followed and would place hearings under the state's Administrative Procedure and Practice Act. The commission would have authority to issue emergency orders under specified circumstances, including if a license holder cheated at a game or the action was necessary for the immediate preservation of the public peace, health, safety, morals, good order, or general welfare.

Miscellaneous. Operators and their employees would be authorized to question any person on the gaming premises who was suspected of violating the poker gaming laws.

The commission would have to establish promotion bonus programs for bad beat hands and other bonus programs. The bill would set criteria for these programs, which could be statewide or limited to individual premises.

The bill would establish a procedure for players to dispute decisions of dealers, first with the operator and then with the commission.

The commission would be required to maintain a list of persons who were to be excluded or ejected from poker gaming operations. The list could include those whose presence the commission determined posed a threat to the interests of Texas, licensed poker gaming, or both. The bill would include criteria that the commission could use to develop the list.

The commission would be authorized to obtain criminal history record information for operators, applicants, employees, manufacturers, distributors, and others involved with poker gaming.

State tax. CSHB 222 would impose an 18 percent tax on the gross receipts for poker gaming collected by commercial operators. The tax rate would be 5 percent for a charitable poker tournament. The tax rate would be 16 percent for commercial operators who also held pari-mutuel racing licenses. The bill would establish procedures for reporting the tax.

The taxes would have to be deposited in a new fund called the Poker Gaming Revenue Fund to be used to pay the costs to the state of regulating the games, with the rest going to the Texas Department of Housing and Community Affairs. The money could be used only as follows:

- 50 percent for grants to cities, counties, and nonprofit organizations to support the following activities: shelter and services for the homeless and to prevent homelessness; renovation of shelters for use as homeless shelters; assistance to the homeless in obtaining permanent housing; medical and psychological counseling for the homeless; homeless prevention activities; and
- the rest to the state's housing trust fund.

The bill would establish penalties for failing to pay or report the required tax and procedures for recomputing the tax if the commission or the comptroller were not satisfied with a tax return. The comptroller would have to communicate electronically daily with each electronic poker table,

including to verify that the required tax has been collected. CSHB 222 would authorize seizure and sale for delinquent taxes under certain circumstances.

Licensees would have to provide security for the payment of the gross receipts tax. Electronic or electromechanical gaming devices intended for use in poker gaming would be exempt from the state sales, excise, and use taxes.

Penalties and offenses. It would be a state jail felony to operate a poker gaming table without a license or to operate more than four tables at the premises of a licensed operator. The bill would create other offenses dealing with possession of unlawful devices, and unlawful manufacturer, sale, or distribution of poker gaming equipment.

Cheating at a poker game would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Two offenses related to minors and poker gaming would be class A misdemeanors. It would be an offense for a person to knowingly permit someone that the person knew was younger than 21 years old to participate in poker gaming at premises licensed under the bill. It also would be an offense for a person younger than 21 years old to participate in poker gaming at premises licensed under the bill.

CSHB 222 would make it a class A misdemeanor to willfully fail to report, pay, or truthfully account for a fee imposed by the bill or to willfully attempt to evade or defeat a fee. The bill would make it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to commit certain types of fraud outlined in the bill that were related to poker gaming. The bill would establish reporting penalties for making false or misleading statements or failing to make required entries in applications, books, or records required under the law.

The bill would make the use of certain types of devices to project the outcome of a poker game or to analyze the probability of an event relating to a game a third-degree felony. It also would prohibit the knowing use of counterfeit or unauthorized chips, tokens, playing cards, or other devices, and make these offenses third-degree felonies.

Knowingly or willfully violating, attempting to violate, or conspiring to violate a provision of CSHB 222 specifying a prohibited act would be a class A misdemeanor.

It would be a defense to prosecution for gambling under Penal Code, sec. 47.02 if the activity was permitted by CSHB 222. It also would be a defense to prosecution under laws outlawing the ownership, transferring, or possession of gambling devices if the premises were those of licensed poker gaming operators.

**SUPPORTERS
SAY:**

CSHB 222 would legalize and regulate poker games that already are occurring across the state so that Texans could play poker in safe environments, and it would allow the state to collect some income from the games to use for worthy causes. Currently, poker games are operating seven days a week throughout the state but are not always occurring in a safe environment, and the state is receiving no benefit from them. CSHB 222 would address these issues by bringing this activity above board and requiring a portion of the gross receipts collected by operators of the games to go to the state.

Authorizing poker gaming would give Texans more entertainment options and allow them to enjoy this increasingly popular game of skill. Currently, underground poker games are played in homes, strip malls, and other places, and the trend shows no signs of stopping. Sometimes these games become targets for robbers who are after the game's cash, and there have been fatal shootings associated with games. Sometimes victims are reluctant to notify police because the game may have been illegal. Law enforcement authorities are expending resources going after these games. Law-abiding Texans should be able to enjoy poker in a safe environment that is free from the criminal elements and law enforcement raids. Any social costs relating to playing poker already exist because Texans are playing the game now and there are costs to the underground games.

The bill would allow games to be operated by establishments such as bars and restaurants, pari-mutuel racetracks, and by each of the state's three federally recognized Native American tribes on their reservations if they met conditions set by the Lottery Commission and CSHB 222. This would make the games available throughout the state in regulated venues. Places with alcoholic beverage licenses and racetracks already have been thoroughly vetted by state agencies. Allowing poker to be played at pari-mutuel race tracks would provide more options for race patrons and would

help the Texas racing industry by generating revenue for race purses. Allowing Texas' Native American tribes to operate games would give these entities a way to increase economic activity on their lands.

The bill also would allow charitable organizations to obtain temporary licenses to sponsor poker tournaments so they could take advantage of this successful and popular way to raise money for numerous causes Texans care about.

Poker gaming in restaurants, bars, and other venues would stimulate economic activity throughout Texas. New jobs would be created for poker dealers, servers, and security officials, and poker venues would see increased food and drink purchases. Some Texans travel to Oklahoma, Louisiana, New Mexico, or other states to play poker legally, and CSHB 222 would help keep this economic activity close to home.

The bill would not open, or even crack the door open, for video lottery terminals, slot machines, or casinos in the state. The specific authorization in the bill is for poker games only, and the definitions, prohibitions, and offenses in the bill would ensure that it in no way legalized these other forms of gambling. Neither would the bill open the door to expanded Indian gaming. It would specify that poker games were considered Class II gaming under federal law governing gambling by Native American tribes.

The bill would impose a comprehensive set of parameters on the games, ensuring proper oversight and regulation. The numerous requirements would include licensing criteria that required bars and restaurants to have paid minimum amounts of alcohol taxes to be eligible for a license. This would ensure that poker was limited and not played in small, neighborhood corner bars and that the establishments had the resources to meet the bill's requirements, such as video surveillance. The bill also would limit the number of tables per establishment to four and would set a reasonable limit on the money that could change hands in a game by limiting the buy-in fee for each game to \$100. Sexually oriented businesses could not get operator's licenses, and players could not be given free drinks.

CSHB 222 could raise could raise tens, if not hundreds, of millions of dollars each biennium for valid and worthwhile causes. Although the fiscal note on CSHB 222 estimates a gain in the first year of \$2.8 million for the poker gaming fund and \$522,607 for the general revenue fund, it

could raise much more. In 2007, it was estimated that a bill identical to CSHB 222 would bring in \$27 million in the first year and grow to \$67 million within five years.

CSHB 222 would help generate desperately needed income for housing programs in Texas. The bill would dedicate the funds, after the costs to administer the bill, to a variety of holistic programs to address the problems and causes of homelessness and to help prevent homelessness. This would help meet the goals of a coalition of eight Texas mayors who are trying to develop a revenue stream for these causes. Half the funds would go for grants to local governments and to other groups for homeless programs and assistance, and the other half would go to the state's housing trust fund for affordable housing programs for lower-income working Texans.

Legalizing and regulating poker gaming could help combat the expansion of unregulated illegal gambling. Law enforcement currently expends resources enforcing laws against poker games, and these resources would be put to better use combating other illegal gambling, as well as other crimes.

A constitutional amendment is not needed to legalize poker in Texas because it is a game of skill, not chance, so it would not violate the Constitution's ban on certain types of gambling.

**OPPONENTS
SAY:**

CSHB 222 would expand gambling in Texas far beyond harmless, kitchen table card games and would be an unwise step toward other types of gambling, including casinos. Current law does not prohibit Texans from playing poker. They are free to play in private games in which winners split all the money. Texans already have sufficient opportunities for gambling entertainment with the state lottery, pari-mutuel racing, and charity bingo.

CSHB 222 would be a significant shift from the type of private, non-commercial games authorized today and would create another full-blown gambling industry in the state. The bill would allow poker gambling to take place in bars and restaurants throughout the state and would not limit wagers. Unlike other forms of entertainment, an increase in gambling would bring with it increased social costs, including gambling addictions. Electronic poker could be especially addictive in the same way as slot machines by offering speedy play and a hypnotizing effect.

The state should not be swayed by the promise of state revenue from CSHB 222. If the state needs funds, it should turn to other means. It is unsavory and immoral to finance essential state programs and needs through expanded gambling.

Promises of increased economic activity could be overblown. Money spent on poker gaming could be money that would have been spent on other types of entertainment or goods and services. Some Texans spend money playing poker while traveling out of state for other reasons, and CSHB 222 would not necessarily keep these dollars in Texas.

CSHB 222 would open the door to expanded gambling by Texas' Native American tribes. Electronic poker might be considered a Class III game under federal law governing gambling by Indian tribes, and this could allow Texas' tribes to operate other types of casino gambling. Tribes other than the three that are currently federally recognized in Texas could try to take advantage of CSHB 222 to operate poker gaming or other gambling in Texas.

A constitutional amendment is necessary to authorize poker gaming in Texas because it clearly is a game of chance. The dealt cards are distributed by chance, resulting in the game meeting all the elements necessary to require a constitutional amendment before authorization.

NOTES:

The author plans to offer a floor amendment that would require a local-option vote to approve poker gaming in an area.

The fiscal note on CSHB 222 estimates a gain in general revenue in fiscal 2010-11 of \$882,223 and a gain to the newly created poker gaming revenue fund of \$19.6 million. The fiscal note also estimates that Lottery Commission would need an additional 32 FTEs to implement the bill, the Department of Public Safety would need an additional three FTEs, and the Racing Commission would need an additional five FTEs.