

- SUBJECT:** Revising definition of bet to exclude prizes in fantasy game or contest
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, S. Thompson
- 0 nays
- 4 absent — Herrero, K. King, Kuempel, Paddie
- WITNESSES:** For — (*Registered, but did not testify:* Neal T. "Buddy" Jones, Dallas Cowboys Football Club, Texas Rangers Baseball Club, Inc.; Stacie Stern, FanDuel Group; Jay Howard, Houston Astros; Eddie Solis, Houston Texans; Laura Dixon, Spurs Sports and Entertainment; Scott Ward, Texas Fantasy Sports Alliance; Saurabh Sharma, Young Conservatives of Texas)
- Against — (*Registered, but did not testify:* Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; Dan Mays, Kickapoo Traditional Tribe of Texas; Nicole Hudgens, Texas Values Action)
- BACKGROUND:** Penal Code ch. 47 governs offenses related to gambling and defines illegal gambling. Under sec. 47.02(a)(1), it is a crime to bet on the results of a game or contest or on the performance of a participant in a game or contest. Offenses are class C misdemeanors punishable by a maximum fine of \$500. Penal Code sec. 47.02(b) provides a three-pronged defense to prosecution for gambling when:
- the gambling was in a private place;
 - no one received economic benefit other than personal winnings; and
 - except for the advantage of skill or luck, the risks of losing and chances of winning were the same for all participants.

Penal Code sec. 47.01(1) defines "bet" as an agreement to win or lose something of value solely or partially by chance. The section lists things that are not considered bets, including an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance.

DIGEST: HB 2303 would amend the Penal Code definition of "bet" so that it did not include an offer of a prize, award, or compensation to participants in a fantasy or simulated game or contest.

The bill would define "fantasy or simulated game or contest" as a bona fide contest, reflecting the knowledge and skill of the participants, in which:

- participants assembled a fictional sports team of actual professional or amateur athletes to compete against other fictional sports teams assembled by other participants for a prize, award, or compensation;
- the value of a prize, award, or compensation was established before the beginning of the game or contest;
- the outcome of the game or contest was determined by the accumulated statistical performances of the individual athletes on a participant's fictional sports team; and
- the outcome of the game or contest was not based solely on the score, point spread, or performance of a single professional or amateur team or athlete.

The bill would include in the current description of prizes that are not considered bets an offer of a prize, award, or compensation to participants, as well as contestants, in a bona fide contest for the determination of skill, speed, strength, or endurance.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

SUPPORTERS HB 2303 would clarify state law to confirm that fantasy sports are skilled-

SAY: based games and therefore not illegal under Texas gambling laws. Current laws do not specifically reference fantasy sports, and it would be best to clearly state that they are not considered illegal betting so that Texans who play these games would not be accused of illegal activity.

Fantasy sports games allow players to form teams of professional or amateur athletes and have them compete based on the performance statistics of real players, which clearly falls into the category of skill-based games. The games require in-depth knowledge and strategy to play, and prizes and awards from these games should be excluded from the definition of an illegal bet.

Because HB 2303 would not expand gambling in Texas, there is no need to amend the Constitution. The bill is narrowly drawn and deals only with fantasy sports competitions, which it clearly defines as having to reflect the knowledge and skill of participants. The bill would not involve sports betting such as wagering on the outcome of a Sunday football game, but simply would clarify definitions so Texans playing in their office fantasy sports pool were not exposed to criminal liability.

HB 2303 would be similar to provisions made by many other states as well as the U.S. Congress, which in 2006 made it clear that participating in fantasy sports that met certain specific criteria was not illegal gambling.

HB 2303 is narrowly drawn to address one small, discrete issue and would not be the place to address concerns about Native American gaming in the state.

OPPONENTS
SAY:

HB 2303 would expand gambling in Texas, something that cannot be done without amending the Texas Constitution. Art. 3, sec. 47(a) of the Texas Constitution requires the Legislature to prohibit lotteries and gift enterprises, and the Constitution has been amended to allow the state lottery, charitable bingo and raffles, sports team charitable raffles, and wagering at racetracks on horse and dog races. If fantasy sports wagering is to be legalized, it also should be done through amending the Constitution.

HB 2303 is not needed to protect the average Texan playing fantasy sports that comply with current Texas law. A 2016 Texas attorney general opinion pointed this out, saying that it likely would not be considered illegal gambling if participants bet as part of a season-long fantasy sports league that met the criteria under Penal Code sec. 47.02 for a defense to prosecution: that the gambling was done in a private place with no one receiving economic benefit other than personal winnings and that, except for skill or luck, the risks of losing and chances of winning were the same for all participants.

The footprint of gambling in Texas should not be expanded, and HB 2303 would open the door to legalizing other forms of gambling by amending the definition of a bet.

**OTHER
OPPONENTS
SAY:**

HB 2303 should include specific language allowing the Kickapoo Traditional Tribe of Texas to offer fantasy sports so it can have the same opportunities as other Texans. Gaming operations by the Kickapoos are governed by the federal Indian Gaming Regulatory Act (IGRA), and the tribe currently operates what is categorized as a Class II gaming facility on its reservation in Eagle Pass. Offering fantasy sports could increase the tribe's revenues and allow it to fund important services and programs. Depending on decisions to be made by federal regulators, the tribe could need an agreement with the state to offer fantasy sports. By including authorization for the tribe to offer only what is being described in HB 2303, the bill could ensure that decisions were made on the state level and that fantasy sports offerings by the tribe were limited to what is happening elsewhere in the state.