

## **BILL ANALYSIS**

Senate Research Center

H.B. 449  
By: Eiland (Patterson)  
State Affairs  
4-8-97  
Engrossed

### **DIGEST**

Currently, Section 47.09(b), Penal Code, sets forth an affirmative defense to a prosecution under the Penal Code that a gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that has entered into the territorial waters of this state in order to call at a state port. One of the conditions under this affirmative defense is that a ship's crew has locked the gambling room so no one can come into contact with the gambling equipment. This bill revises the conditions for such an affirmative defense under Section 47.09(b), Penal Code. The bill would provide the additional option, under the affirmative defense conditions, that a ship's crew is authorized to leave the doors accessing the gambling equipment open for entry or re-entry by the passengers while leaving or entering the territorial waters of this state so long as the equipment is covered and disabled.

### **PURPOSE**

As proposed, H.B. 449 revises the conditions for an affirmative defense to a prosecution under the Penal Code that a gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that has entered the territorial waters of this state to call at a port in this state.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 47.09(b), Penal Code, to provide that it is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c), that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if, among other conditions and except as permitted by Subdivision (3), at all times while the vessel is in the territorial waters of this state, all devices, equipment, or paraphernalia are covered in a manner that prevents the use or viewing of the device, equipment, or paraphernalia and that allows only the master or crew of the vessel to uncover the device, equipment, or paraphernalia; and disabled, electronically or by another method, from a remote and secured area of the vessel in a manner that allows only the master or crew of the vessel to remove any disabled device. Provides that it is also a condition to an affirmative defense, if at all times while the vessel is in the territorial waters of this state, no person other than the master and crew of the vessel is permitted, except for the purposes of inspecting or repairing the device, equipment, or paraphernalia, to either enter or view the portion of the vessel in which the device, equipment, or paraphernalia is locked or secured under Subdivision (2)(A); or uncover the device, equipment, or paraphernalia or remove any disabling device located on the vessel. Makes conforming and substantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Emergency clause.  
Effective date: upon passage.