

BILL ANALYSIS

Senate Research Center

S.B. 1701
By: Sibley
State Affairs
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As Filed

DIGEST

Currently, there is a difference between legislative intent and existing gambling practices in Texas. This bill clarifies the regulation of gambling and gambling devices by providing for seizure and forfeiture or destruction as a remedy for persons abusing the video slot machine defensive issue or similar defenses and provides a graduated scale of penalties for bookmaking.

PURPOSE

As proposed, S.B. 1701 clarifies the regulation of gambling and gambling devices by providing for seizure and forfeiture or destruction as a remedy for persons abusing the video slot machine defensive issue or similar defenses and provides a graduated scale of penalties for bookmaking.

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 Chapter 47, Penal Code, as follows:

Sec. 47.01. DEFINITIONS. Redefines "bet," "bookmaking," "gambling place," "gambling device," "altered gambling equipment," "gambling paraphernalia," "lottery," "private place," and "thing of value." Defines "amusement machine," "purported amusement machine," "carnival game," "casino game," "gray machine," "gambling," "single play," and "video lottery machine."

Sec. 47.02. GAMBLING. Deletes Subsections (2) and (3) regarding betting. Sets forth affirmative defenses to prosecution under this section, including, the actor reasonably believed that the conduct was subject to a defensive issue described in Section 47.11. Sets forth defenses to prosecution under this section, including that the conduct was expressly authorized or permitted by other law. Deletes Subsection (c)(4). Provides that an offense under this section is a Class C misdemeanor, except as provided by Subsection (e). Provides that an offense under this section is a Class B misdemeanor if the value of the bets made or things of value received by an actor was \$50 or more. Deletes previous Subsection (e) relating to defenses to prosecution. Makes nonsubstantive and conforming changes.

Sec. 47.03. GAMBLING PROMOTION. Provides for an offense if a person intentionally or knowingly does certain acts with intent to further gambling, including for gain sells a chance or bet. Deletes previous Subsection (4), providing a certain offense. Provides that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

Sec. 47.04. KEEPING A GAMBLING PLACE. Provides that a person commits an offense, if, with intent to further gambling, the person knowingly uses or permits another to use property owned or under the person's control as a gambling place, rather than any property under his control. Deletes previous Subsection (b) regarding affirmative defenses. Makes conforming and nonsubstantive changes.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. Deletes Subsection (b), relating to certain wagers. Makes conforming changes.

Sec. 47.06. New heading: POSSESSION OF GAMBLING DEVICE OR EQUIPMENT. Provides that a person commits an offense if the person commercially transfers certain devices or equipment. Sets forth requirements by which a machine is classified a gambling device used with the intent to further gambling. Deletes existing Subsections (b)-(d) and (e)-(g), pertaining to possessing gambling paraphernalia. Provides that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

Sec. 47.07. POSSESSION OF GAMBLING EQUIPMENT. Sets forth requirements for committing an offense by possessing gambling equipment.

Sec. 47.08. POSSESSION OF ALTERED GAMBLING PARAPHERNALIA. Sets forth requirements for committing an offense by possessing altered gambling equipment.

Sec. 47.09. EVIDENCE. Sets forth evidence to be used to prove a nomination, appointment, election, or other public event, game, or contest. Makes conforming changes.

Sec. 47.10. TESTIMONIAL IMMUNITY. Sets forth requirements for testimonial immunity. Makes nonsubstantive changes. Redesignated from existing Section 47.08.

Sec. 47.11. New heading: OTHER DEFENSIVE ISSUES. Provides that it is an exception to the application of this chapter that an actor's conduct did not involve gambling or the intent to further gambling. Deletes Subdivisions (1)-(3), relating to defenses. Provides for affirmative defenses under Sections 47.03, 47.06, and 47.08, rather than Sections 47.06(a) and (c). Provides that certain government attorneys are not required to have a search warrant or subpoena to inspect certain gambling devices on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state. Sets forth affirmative defenses. Redesignated from existing Section 47.09. Makes conforming changes.

Sec. 47.12. ENHANCED PENALTY. Sets forth enhanced penalties for an offense under this chapter.

Sec. 47.13. AGGREGATION. Sets forth requirements for aggregation of offenses.

SECTION 2. Amends Article 18.18, Code of Criminal Procedure, as follows:

Art. 18.18. New heading: DISPOSITION OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA, PROHIBITED WEAPON, CRIMINAL INSTRUMENT, AND OTHER CONTRABAND. Defines "attorney representing the state," "fighting dog," "dog-fighting equipment," "gambling," "gambling device," "altered gambling equipment," "gambling paraphernalia," "amusement machine," and "purported amusement machine." Redefines "contraband." Requires a court entering an order of deferred adjudication or an order placing a person on community supervision in an offense involving contraband to order that the contraband be destroyed or forfeited to the state. Requires a court entering an order of deferred adjudication or an order placing a person on community supervision to enter on its own motion, on a motion by the state, or on a motion of the law enforcement agency initiating the complaint after notice to the attorney representing the state in the case, if the attorney fails to move for the order. Requires the court to enter an order under this subsection no later than the 30th day after the date the court entered its underlying order of deferred adjudication or an order placing a person on community supervision. Deletes a provision relating to prohibited weapons. Authorizes a magistrate in the county in which the offense occurred to enter an order on the same motion as provided by Subdivision (2). Sets forth duties of the court with regards to obscene devices or fighting dogs. Deletes existing text regarding fighting dogs. Requires a court ordering forfeiture of contraband to the state under this article to order the contraband delivered to the state to any political subdivision. Sets forth duties of the court with regard to gambling proceeds. Sets forth requirements for a court ordering forfeiture to the state under this article. Provides that this article does not apply to

an amusement machine or purported amusement machine. Sets forth requirements and procedures in showing why contraband should not be destroyed. Sets forth notice requirements. Deletes existing Subsection (g). Makes conforming and nonsubstantive changes.

SECTION 3. Amends Article 8801, V.T.C.S., by amending Subdivision (3) and adding Subdivision (8), to redefine "coin-operated machine" and to define "amusement machine," "purported amusement machine," and "gambling device."

SECTION 4. Amends Article 8806, V.T.C.S., by adding Subsections (3)-(5), to set forth duties of owners of tax exempt amusement machines. Sets forth duties of the comptroller under this subsection.

SECTION 5. Amends Article 8810, V.T.C.S., to require each owner of a coin-operated machine to keep certain records for machines owned, operated, exhibited, displayed, acquired, handled, or controlled by the person in this state. Sets forth requirements of the records to be kept.

SECTION 6. Amends Article 8811, V.T.C.S., to set forth violations of this Act. Sets forth civil penalties for a person who violates Subsection (a) or (b). Provides that each day's violation is to constitute a separate offense. Sets forth effects for not paying an assessed penalty under this article on time. Defines "required permit."

SECTION 7. Amends Article 8812, V.T.C.S., to provide that a person commits an offense if the person knowingly violates Article 8811 of this chapter. Deletes existing Subsection (a).

SECTION 8. Amends Section 1(a), Article 8817, V.T.C.S., to redefine "music or skill or pleasure coin-operated machine."

SECTION 9. Amends Section 4, Article 8817, V.T.C.S., to provide that the powers of the comptroller include cancelling a tax permit or tax exempt permit or destroying or seizing certain illegal machinery. Makes a conforming change.

SECTION 10. Amends Section 8, Article 8817, V.T.C.S., by adding Subdivision (6), to require a corporation or association to register certain machines.

SECTION 11. Amends Section 12(2), Article 8817, V.T.C.S., to require an application to contain certain declarations. Makes a conforming change.

SECTION 12. Amends Section 15, Article 8817, V.T.C.S., to require certain persons to apply for a one-time tax exempt amusement machine license.

SECTION 13. Amends Section 16, Article 8817, V.T.C.S., by adding Subsection (5), to provide that a tax exempt amusement machine license fee is \$25 and is a one-time charge.

SECTION 14. Amends Section 16A, Article 8817, V.T.C.S., by amending Subsection (1) and adding Subsection (7), to require an owner to register an amusement machine or purported amusement machine. Makes conforming changes.

SECTION 15. Amends Section 18, Article 8817, V.T.C.S., to make conforming changes.

SECTION 16. Amends Article 8817, V.T.C.S., by adding Section 18A, as follows:

Sec. 18A. SEIZURE, FORFEITURE, OR DESTRUCTION OF ILLEGAL AMUSEMENT MACHINES. Sets forth requirements for seizing, forfeiting, or destroying illegal amusement machines.

SECTION 17. Amends Section 20(1), Article 8817, V.T.C.S., to make conforming changes.

SECTION 18. Amends Section 22(1), Article 8817, V.T.C.S., to make conforming changes.

SECTION 19. Amends Section 23(1), Article 8817, V.T.C.S., to make conforming changes.

SECTION 20. Amends Chapter 466G, Government Code, by adding Section 466.318, as follows:

Sec. 466.318. VIDEO LOTTERY MACHINE PROHIBITED. Provides that a person commits a Class A misdemeanor if the person owns, operates, installs, exhibits, or sets up a video lottery machine. Defines "video lottery machine."

SECTION 21. Effective date: September 1, 1997.

SECTION 22. Makes application of this Act prospective.

SECTION 23. Emergency clause.