

## **BILL ANALYSIS**

C.S.H.B. 1407  
By: Hupp  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 1993 and 1995, the Legislature amended Section 47.01, Penal Code, to provide that certain coin-operated amusement machines are not within the definition of a "gambling device." These include machines that award players non-cash merchandise, prizes and novelties that have a wholesale value of \$5 or 10 times the amount paid to play the machine, whichever is less.

Since then, there have been many disputes about what the law means and which kinds of activities are legal. Law enforcement officials in some jurisdictions have interpreted the law to outlaw all so-called "eight-liner" machines. Other jurisdictions have allowed these machines to be operated as long as they do not pay cash. Still other jurisdictions have come down somewhere in between. A recent Texas Supreme Court opinion concluded that a gift certificate is a "cash equivalent," although the Penal Code states that "representations of value" redeemable for a non-cash merchandise prize are acceptable. The result of these various controversies has been a lack of uniform enforcement of the law and an inability of the public to understand what is and what is not legal.

The purpose of C.S.H.B 1407 is to address many of the issues that have arisen in the last decade, establish a regulatory structure for the machines, and impose a variety of fees to fund enforcement and other state activities. The substitute also provides that unless a local option election has been held approving the machines in any given jurisdiction, they are illegal and that only charities, veterans and religious groups, fraternal organizations and volunteer fire departments may exhibit the machines to users, with exceptions. Finally, CSHB 1407 will clarify the Penal Code definition of "gambling device" and make more certain what is legal and what is illegal.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Comptroller of Public Accounts in SECTION 1 (Section 2153.502, Section 2153.503, and Section 2153.507 (e), Occupations Code) of this bill.

### **ANALYSIS**

SECTION 1. Adds Subchapter K, Chapter 2153, Occupations Code. Defines "amusement redemption machine," "authorized organization," "coin-operated machine," "political subdivision," "prize," "representation of value," and "user." Delegates rulemaking authority to the comptroller and directs the agency to establish rules for the exhibition, display, operation, promotion and use of amusement redemption machines. Provides that nothing in the chapter limits the ability of a political subdivision to regulate the location of amusement redemption machines.

Provides that an amusement redemption machine must be certified by the comptroller or an private testing service contracted by the comptroller using certification standards set by the comptroller to facilitate auditing and accountability.

Requires the comptroller to issue a license to exhibit amusement redemption machines to an authorized organization that meets standards set in the bill. Provides that the license does not authorize the holder to exhibit an amusement redemption machine to a user unless the machine is located in a political subdivision that has held an election to approve the machines and the amusement redemption machine is owned or leased by the organization.

Provides that an organization that holds a license to conduct bingo shall be issued a license to exhibit amusement redemption machines by paying the applicable fees and providing proof of licensure under the Bingo Enabling Act. Provides for the expiration of such licenses if the organization's license to conduct bingo ceases to be active.

Provides that the comptroller may not issue to an organization if any officer or director of the organization has been convicted of certain criminal offenses. Provides that an amusement redemption machine may not be exhibited to a user under the age of 18.

Requires the physical address where any amusement redemption machine is or will be located to be listed in the license application and that the license shall be displayed at all times where the machines are located. Provides that a person other than an authorized organization may be licensed and exhibit amusement redemption machines provided the person exhibits no more than five machines at any given premises. Places restrictions on certain kinds of amusement redemption machines so that the five-machine limit may not be avoided and grandfatheres certain machines located in certain locations before January 1, 2003 regardless of how far apart they are and whether they are under a common roof or over a common foundation. Defines "premises."

Establishes fees for registration (\$500 per machine), annual licenses (\$10,000), and to cover regulatory activities of the comptroller. Imposes a tax equal to the percentage of the value of a prize otherwise subject to the sales tax times the sales tax rate and provides certain enforcement procedures for the tax. Requires a tax permit for an amusement redemption machine to also include the physical address where the machine is located and provides that the permit is valid only when the machine is located at that address.

Provides that Sec. 2153.008, Occupations Code, which exempts certain owners of certain coin-operated machines does not apply to owners or exhibitors of amusement redemption machines.

Provides that the governing body of a political subdivision may call an election to approve amusement redemption machines and shall call an election on receipt of a qualifying petition. Provides the criteria that petitions must meet to require an election by petition, including the language of the petition. Provides that a petition is valid only if signed by a number of registered voters equal to ten percent of the number of registered voters in the subdivision who participated in the most recent general election.

Provides the criteria that the signatures on the petition must meet and the information about the voter that must appear on the petition. Sets time limits for processing and approving or rejecting the petition. Provides procedures and time limits for ordering an election when a valid petition is presented. Provides the language that must be included in the ballot proposition and the effects of certain election outcomes, depending on what kind of election is being held and the results of those elections.

Provides for certain procedures to be followed by the political subdivision if an election passes in order for the comptroller to receive notice and begin regulating the machines in that area. Provides for the effects of certain changes in the boundaries of a political subdivision, such as by annexation.

SECTION 2. Amends the Penal Code to define "gambling device" and excludes amusement redemption machines from the exception to that definition. Clarifies that certain coin-operated machines would remain under the Penal Code, including machines that award prizes from the machine and machines in which the user hits, throws or pushes a ball or other physical object. Retains the \$5 or ten-times-the-amount-paid-to-play rule for these machines.

SECTION 3. Provides a conforming amendment to gambling-related Penal Code sections to include activity conducted under the amusement redemption regulations in a list of defenses to prosecution.

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SECTION 6. Provides that the Act does not attempt to supercede federal law of the state constitution and that the Act has not effect if found to be unconstitutional by a court with appropriate jurisdiction.

SECTION 7. Provides that the Act is effective immediately if it receives the constitutionally required votes in both houses or September 1, 2003, except for SECTION 2, which takes effect September 1, 2005. Activities before September 1, 2005, remain governed by the law in effect at the time the activities took place.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003. SECTION 2 of the bill takes effect September 1, 2005.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute adds “prize” to the list of definitions.

Requires the comptroller to adopt rules for the regulation of amusement redemption machines; requires a machine to be certified as a coin-operated machine by the comptroller or a private testing service contracted by the comptroller and requires the comptroller to set the certification standards, by rule.

Requires an application for a license to include the physical street address at which any amusement redemption machine is or will be located and requires the license holder to display the license in a conspicuous place.

Provides the comptroller to issue a license to a person other than an authorized organization to exhibit an amusement machine to a user provided (1) that the person exhibits not more than five machines at any given premises; and (2) the machine is located within a political subdivision in which an election has been held authorizing the use of the machine. Places restrictions on certain kinds of amusement redemption machines so that the five-machine limit may not be avoided and grandfathers certain machines located in certain locations before January 1, 2003 regardless of how far apart they are and whether the locations are under a common roof or over a common foundation. Requires the comptroller to adopt rules to establish criteria applicants must demonstrate to prove that the requirements are satisfied. Defines “premises”

Raises the registration fee from \$350 to \$500 per machine; the annual license fee is \$10,000 instead of \$10,000 per 100 machines or any fraction of 100 machines.

Requires a tax permit for an amusement redemption machine and requires the permit to include a physical street address where the machine is located and provides that the permit is only valid while affixed to the machine at that address.

Provides that Section 2153.008, Occupations Code does not apply to a person who owns or exhibits an amusement redemption machine.

Amends the Penal Code to further define “gambling device” to exclude amusement redemption machine.