

By: Hupp

H.B. No. 1407

Substitute the following for H.B. No. 1407:

By: Flores

C.S.H.B. No. 1407

A BILL TO BE ENTITLED

AN ACT

relating to the exhibition and regulation of amusement redemption machines by certain nonprofit organizations and others where approved by local option.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2153, Occupations Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. AMUSEMENT REDEMPTION MACHINES

Sec. 2153.501. DEFINITIONS. In this subchapter:

(1) "Amusement redemption machine" means a skill or pleasure coin-operated machine that by operation of chance or a combination of skill and chance affords the user an opportunity to receive a prize, or a representation of value redeemable for a prize, but does not include a machine:

(A) that awards the user a prize or prizes solely and directly from the machine, including claw, crane, or similar machines; or

(B) from which the opportunity to receive a prize, or a representation of value redeemable for a prize, varies depending on the user's ability to throw, roll, flip, toss, hit, or drop a ball or other physical object into the machine or a part of the machine, including basketball, skeeball, golf, bowling, pusher, or similar machines.

(2) "Authorized organization" has the meaning

1 assigned by Section 2001.002.

2 (3) "Coin-operated machine" includes a machine or  
3 device operated by the payment or insertion of paper currency or any  
4 other consideration.

5 (4) "Political subdivision" means a county, justice  
6 precinct, or municipality.

7 (5) "Prize" means non-cash merchandise, toys, or  
8 novelties.

9 (6) "Representation of value" means a ticket, a gift  
10 certificate, or gift card that may be presented to a merchant and is  
11 redeemable solely for a prize.

12 (7) "User" means an individual who for consideration  
13 operates an amusement redemption machine for the opportunity to win  
14 a prize.

15 Sec. 2153.502. REGULATORY AUTHORITY. (a) The comptroller  
16 shall adopt rules for regulating the exhibition, display,  
17 operation, promotion, and use of amusement redemption machines.

18 (b) Nothing in this chapter limits the authority of a  
19 political subdivision of this state to regulate the location of  
20 amusement redemption machines as permitted by Section 2153.452.

21 Sec. 2153.503. CERTIFICATION OF MACHINES. To be treated as  
22 a coin-operated amusement redemption machine under this  
23 subchapter, a machine must be certified as a coin-operated  
24 amusement redemption machine by the comptroller or a competent  
25 private testing service that has contracted with the comptroller to  
26 certify machines as coin-operated amusement redemption machines.  
27 The comptroller by rule shall set the certification standards to

1 facilitate the auditing and accountability of amusement redemption  
2 machines.

3 Sec. 2153.504. LICENSING OF AUTHORIZED ORGANIZATIONS TO  
4 EXHIBIT AMUSEMENT REDEMPTION MACHINES. (a) On application of an  
5 authorized organization, the comptroller shall issue to the  
6 organization a license under Section 2153.152 that authorizes the  
7 organization to exhibit an amusement redemption machine to a user  
8 of the machine as provided by this subchapter.

9 (b) A license issued under Section 2153.152 does not  
10 authorize the holder to exhibit an amusement redemption machine to  
11 a user of the machine unless the license holder is an authorized  
12 organization and:

13 (1) the authorized organization holds a license issued  
14 under this subchapter;

15 (2) the amusement redemption machine is located in a  
16 political subdivision in which an election has been held under this  
17 subchapter authorizing the use of amusement redemption machines and  
18 that authorization is still in effect in that location; and

19 (3) the amusement redemption machine is owned by the  
20 authorized organization or leased by the organization from a person  
21 authorized by law to lease the amusement redemption machine to the  
22 organization.

23 (c) An authorized organization that holds a license to  
24 conduct bingo under Chapter 2001 is entitled to a license under this  
25 subchapter if the organization:

26 (1) provides proof to the comptroller that the license  
27 to conduct bingo is in effect; and

1           (2) pays the applicable license fees and registration  
2 fees under this subchapter for the amusement redemption machines to  
3 be exhibited under the license.

4           (d) A license issued under Subsection (c) expires on the  
5 61st day after the date on which the authorized organization ceases  
6 to hold an active license to conduct bingo issued under Chapter  
7 2001. This subsection does not prohibit the organization from  
8 obtaining a separate license under this subchapter before the  
9 license issued under Subsection (c) expires.

10          (e) The comptroller may not issue a license under this  
11 subchapter to an authorized organization if an officer or director  
12 of the organization has been convicted of a felony, criminal fraud,  
13 a gambling or gambling-related offense, or a crime of moral  
14 turpitude and less than 10 years has elapsed since the termination  
15 of a sentence, parole, mandatory supervision, or community  
16 supervision served for the offense.

17          (f) An authorized organization may not exhibit an amusement  
18 redemption machine under a license issued under this subchapter to  
19 a user who is younger than 18 years of age.

20          Sec. 2153.505. ADDITIONAL GENERAL BUSINESS LICENSE  
21 PROVISIONS APPLICABLE TO AMUSEMENT REDEMPTION MACHINES. An  
22 application for a license under Subchapter D for a person engaging  
23 in a business for which a license is required by Section 2153.151  
24 that involves amusement redemption machines must, in addition to  
25 the information required by Section 2153.153, include the physical  
26 street address at which any amusement redemption machine is or will  
27 be located.

1       Sec. 2153.506. DISPLAY OF LICENSE. A license holder shall  
2 display a license issued under this subchapter relating to  
3 amusement redemption machines at all times in a conspicuous place  
4 in each location where amusement redemption machines are exhibited  
5 or operated under the license.

6       Sec. 2153.507. ISSUANCE OF LICENSE TO ENTITY OTHER THAN AN  
7 AUTHORIZED ORGANIZATION. (a) Notwithstanding any other law, the  
8 comptroller shall issue a license under Section 2153.152 that  
9 authorizes a person other than an authorized organization to  
10 exhibit an amusement redemption machine to a user, subject to the  
11 requirements and limitations of this section.

12       (b) Not more than five amusement redemption machines may be  
13 exhibited for play at one time on a premises by a person licensed  
14 under this section. For purposes of this subsection, an amusement  
15 redemption machine designed to be operated simultaneously by more  
16 than one user shall be counted as one machine multiplied by the  
17 number of possible simultaneous users.

18       (c) A license issued under this section authorizes the  
19 license holder to exhibit an amusement redemption machine to a user  
20 if the machine is located within a political subdivision in which an  
21 election has been held under this subchapter authorizing the use of  
22 an amusement redemption machine.

23       (d) Notwithstanding Subsections (b) and (f), two or more  
24 locations where amusement redemption machines were lawfully  
25 operated under separate ownership and control before January 1,  
26 2003, are considered separate premises for purposes of this  
27 section, regardless of the actual distance of the locations from

1 each other or whether the locations are under a common roof or over  
2 a common foundation.

3 (e) The comptroller shall adopt rules establishing criteria  
4 applicants must demonstrate to prove that the requirements of  
5 Subsection (d) are satisfied.

6 (f) For purposes of this section, "premises" means any  
7 facility located under a common roof or located over a common  
8 foundation and includes any area within 200 feet of the common roof  
9 or foundation.

10 Sec. 2153.508. FEES. (a) Notwithstanding Section  
11 2153.157, the registration fee for an amusement redemption machine  
12 that is exhibited to users under this subchapter is \$500 per year.

13 (b) In addition to the license fees required by Section  
14 2153.154, the comptroller shall collect an annual license fee  
15 applicable to each license holder described in Section 2153.152 who  
16 owns one or more amusement redemption machines. The annual license  
17 fee under this subsection is \$10,000.

18 (c) In addition to any other fee authorized by this chapter,  
19 the comptroller may set and collect a fee necessary to cover any  
20 additional costs of determining the eligibility of an applicant for  
21 a license under this subchapter.

22 Sec. 2153.509. TAX ON AMUSEMENT REDEMPTION MACHINE PRIZES.

23 (a) A tax is imposed on each cash or cash equivalent prize awarded  
24 from play of a coin-operated amusement redemption machine to be  
25 collected by the operator of the amusement redemption machine on  
26 behalf of the comptroller. The amount of the tax is a percentage of  
27 the value of a prize subject to the tax equal to the percentage of

1 the sales price of a taxable item that constitutes the sales tax  
2 rate imposed under Chapter 151, Tax Code.

3 (b) Sections 2153.404 and 2153.407 apply to the tax imposed  
4 by this section.

5 Sec. 2153.510. ADDITIONAL TAX PERMIT PROVISIONS APPLICABLE  
6 TO AMUSEMENT REDEMPTION MACHINES. A tax permit issued for an  
7 amusement redemption machine must state the physical street address  
8 designated by the license holder when the permit is issued, and is  
9 valid only while affixed to the amusement redemption machine at  
10 that address.

11 Sec. 2153.511. OWNER OR EXHIBITOR OF AMUSEMENT REDEMPTION  
12 MACHINES NOT EXEMPT. Section 2153.008 does not apply to a person  
13 who owns or exhibits an amusement redemption machine.

14 Sec. 2153.512. (a) LOCAL OPTION AUTHORIZATION OR  
15 PROHIBITION ELECTIONS. The governing body of a county, justice  
16 precinct, or municipality:

17 (1) shall order and hold an election under this  
18 subchapter in the appropriate political subdivision if the  
19 governing body is presented with a petition for an election that  
20 meets the requirements of this subchapter; and

21 (2) may order and hold an election on its own motion.

22 (b) For purposes of this subchapter, the county  
23 commissioners court is the governing body of a justice precinct.

24 Sec. 2153.513. ELECTION PETITIONS. (a) A petition for an  
25 election to authorize amusement redemption machines under this  
26 subchapter must have a statement substantially as follows preceding  
27 the space reserved for signatures on each page: "This petition is to

1 require that an election be held in (name of political subdivision)  
2 to authorize the operation of amusement redemption machines under  
3 Chapter 2153, Occupations Code."

4 (b) A petition for an election to prohibit amusement  
5 redemption machines under this subchapter must have a statement  
6 substantially as follows preceding the space reserved for  
7 signatures on each page: "This petition is to require that an  
8 election be held in (name of political subdivision) to prohibit the  
9 operation of amusement redemption machines under Chapter 2153,  
10 Occupations Code."

11 (c) A petition is valid for purposes of Section 2153.512  
12 only if it is signed by a number of registered voters of the  
13 political subdivision that exceeds 10 percent of the number of  
14 registered voters who voted in the political subdivision in the  
15 most recent general election for state and county officers, or the  
16 number of registered voters specified in the document governing the  
17 administration of the political subdivision, whichever is less. If  
18 boundaries of the political subdivision do not coincide with  
19 boundaries of election precincts in effect for that general  
20 election, the officer verifying the petition may use a reasonable  
21 method to estimate the number of registered voters who voted in that  
22 election in the political subdivision.

23 (d) A signer must enter beside the signer's signature the  
24 date of signing the petition. A signature may not be counted if the  
25 signer fails to enter the date or if the date of signing is earlier  
26 than the 90th day before the date the petition is submitted to the  
27 governing body.



1       (e) In addition to the signature and date of signing, the  
2 petition must include each signer's:

3           (1) current voter registration number;

4           (2) printed name; and

5           (3) residence address, including zip code.

6       (f) Not later than the fifth day after the date the  
7 governing body receives a petition for an election, the governing  
8 body shall submit the petition for verification to the county clerk  
9 if the petition is applicable to a county or justice precinct or to  
10 the municipal secretary if the petition is applicable to a  
11 municipality.

12       (g) The officer to whom the petition is submitted for  
13 verification shall determine whether the petition is signed by the  
14 required number of registered voters of the political subdivision  
15 in which the election is requested.

16       (h) Not later than the 30th day after the date the petition  
17 is submitted to the officer for verification, the officer shall  
18 certify in writing to the governing body whether the petition is  
19 valid. If the officer determines that the petition is invalid, the  
20 officer shall state all reasons for the determination.

21       Sec. 2153.514. ELECTION ORDER. If the officer responsible  
22 for certifying a petition determines that a petition is valid, the  
23 governing body shall:

24           (1) order that an election be held in the appropriate  
25 political subdivision on the next uniform election day provided by  
26 Section 41.001(a), Election Code, that occurs not earlier than the  
27 45th day after the date of the officer's certification; and

1           (2) notify the comptroller by certified mail, return  
2 receipt requested, that an election has been ordered.

3           Sec. 2153.515. BALLOT PROPOSITIONS. (a) In an election to  
4 authorize amusement redemption machines under this subchapter in a  
5 political subdivision, the ballot shall be prepared to provide for  
6 voting for or against the proposition: "Authorizing the operation  
7 of amusement redemption machines under Chapter 2153, Occupations  
8 Code, in (name of political subdivision)."

9           (b) In an election to prohibit amusement redemption  
10 machines under this subchapter in a political subdivision, the  
11 ballot shall be prepared to provide for voting for or against the  
12 proposition: "Prohibiting the operation of amusement redemption  
13 machines under Chapter 2153, Occupations Code, in (name of  
14 political subdivision)."

15           Sec. 2153.516. EFFECT OF ELECTION. (a) The governing body  
16 of a political subdivision in which an amusement redemption machine  
17 election has been held shall not later than the 10th day after the  
18 date of the election give written notification to the comptroller  
19 of the results of the election.

20           (b) If a majority of the qualified voters voting on the  
21 question in an authorization election vote in favor of  
22 authorization, amusement redemption machines are authorized  
23 throughout the political subdivision beginning on the 10th day  
24 after the date the result of the election is officially declared,  
25 except as otherwise provided as to a part of the political  
26 subdivision for which Subsection (g) requires a contrary status.

27           (c) If a majority of the qualified voters voting on the

1 question in a prohibitory election vote in favor of prohibition,  
2 amusement redemption machines are prohibited throughout the  
3 political subdivision beginning on the 10th day after the date the  
4 result of the election is officially declared, except as otherwise  
5 provided as to a part of the political subdivision for which  
6 Subsection (g) requires a contrary status.

7 (d) If a majority of the qualified voters voting on the  
8 question in an authorization election do not favor authorization,  
9 or if a majority of the qualified voters voting on the question in a  
10 prohibitory election do not favor prohibition, the election has no  
11 effect on the status under this subchapter of the political  
12 subdivision in which the election is held.

13 (e) If as a result of the election amusement redemption  
14 machines are authorized in the political subdivision, the governing  
15 body shall furnish the comptroller with a map prepared by the  
16 governing body indicating the boundaries of the political  
17 subdivision in which amusement redemption machines are authorized.

18 (f) In determining whether amusement redemption machines  
19 under this subchapter are authorized in an area, the rules provided  
20 by this section apply. Amusement redemption machines are  
21 authorized in an area only as the result of a successful election  
22 held under this subchapter.

23 (g) To the extent that the results of local option elections  
24 held by different types of political subdivisions conflict with  
25 regard to the same territory, the relative dates of the elections  
26 are of no consequence and the following rules apply:

27 (1) the status of an area as determined by a municipal

1 election prevails over a contrary status as determined by a justice  
2 precinct or county election; and

3 (2) the status of an area as determined by a justice  
4 precinct election prevails over the contrary status of the area as  
5 determined by a county election.

6 (h) If two or more local option elections held at the  
7 justice precinct level apply to the same territory, the most recent  
8 election prevails.

9 (i) If a municipality has established a status by a  
10 municipal election, territory annexed to the municipality after  
11 that status is established assumes the status under this subchapter  
12 of the rest of the municipality. Territory detached from the  
13 municipality assumes the status the territory would have had if it  
14 had never been a part of the municipality. If the detached  
15 territory is added to another municipality that has established a  
16 status by a municipal election, the territory assumes the status of  
17 the municipality to which it is added.

18 (j) The addition of territory to or detachment of territory  
19 from a justice precinct does not affect the status under this  
20 subchapter of the added or detached territory.

21 SECTION 2. Section 47.01(4), Penal Code, is amended to read  
22 as follows:

23 (4) "Gambling device" means any electronic,  
24 electromechanical, or mechanical contrivance not excluded under  
25 Paragraph (B) that for a consideration affords the player an  
26 opportunity to obtain anything of value, the award of which is  
27 determined solely or partially by chance, even though accompanied

1 by some skill, whether or not the prize is automatically paid by the  
2 contrivance. The term:

3 (A) includes, but is not limited to, gambling  
4 device versions of bingo, keno, blackjack, lottery, roulette, video  
5 poker, or similar electronic, electromechanical, or mechanical  
6 games, or facsimiles thereof, that operate by chance or partially  
7 so, that as a result of the play or operation of the game award  
8 credits or free games, and that record the number of free games or  
9 credits so awarded and the cancellation or removal of the free games  
10 or credits; and

11 (B) does not include any electronic,  
12 electromechanical, or mechanical contrivance designed, made, and  
13 adapted solely for bona fide amusement purposes if:

14 (i) the contrivance:

15 (a) rewards the player with noncash  
16 merchandise prizes, toys, or novelties solely and directly from the  
17 machine, including claw, crane, or similar machines; or

18 (b) offers the player the opportunity  
19 to receive noncash merchandise prizes, toys, or novelties, or a  
20 representation of value redeemable for those items, depending on  
21 the user's ability to throw, roll, flip, toss, hit, or drop a ball  
22 or other physical object into the machine or a part of the machine,  
23 including basketball, skeeball, golf, bowling, pusher, or similar  
24 machines; and

25 (ii) the ~~[exclusively with]~~ noncash  
26 merchandise prizes, toys, or novelties, or a representation of  
27 value redeemable for those items, that may be awarded have a

1 wholesale value available from a single play of the game or device  
2 of not more than 10 times the amount charged to play the game or  
3 device once or \$5, whichever is less.

4 SECTION 3. Section 47.02(c), Penal Code, is amended to read  
5 as follows:

6 (c) It is a defense to prosecution under this section that  
7 the actor reasonably believed that the conduct:

8 (1) was permitted under Chapter 2001, Occupations  
9 Code;

10 (2) was permitted under Chapter 2002, Occupations  
11 Code;

12 (3) consisted entirely of participation in the state  
13 lottery authorized by the State Lottery Act (Chapter 466,  
14 Government Code);

15 (4) was permitted under the Texas Racing Act (Article  
16 179e, Vernon's Texas Civil Statutes); ~~or~~

17 (5) consisted entirely of participation in a drawing  
18 for the opportunity to participate in a hunting, fishing, or other  
19 recreational event conducted by the Parks and Wildlife Department;  
20 or

21 (6) was authorized under Subchapter K, Chapter 2153,  
22 Occupations Code, or a license issued under that subchapter.

23 SECTION 4. Section 47.06(f), Penal Code, is amended to read  
24 as follows:

25 (f) It is a defense to prosecution under Subsection (a) or  
26 (c) that the person owned, manufactured, transferred, or possessed  
27 the gambling device, equipment, or paraphernalia for the sole

1 purpose of shipping it:

2           (1) within this state to a location at which amusement  
3 redemption machines may be exhibited under a license issued under  
4 Subchapter K, Chapter 2153, Occupations Code, if the item is an  
5 amusement redemption machine as defined by that subchapter or a  
6 component part of or supply for use in an amusement redemption  
7 machine as defined by that subchapter; or

8           (2) to another jurisdiction where the possession or  
9 use of the device, equipment, or paraphernalia was legal.

10           SECTION 5. Section 47.09, Penal Code, is amended by  
11 amending Subsection (a) and adding Subsection (c) to read as  
12 follows:

13           (a) It is a defense to prosecution under this chapter that  
14 the conduct:

15               (1) was authorized under:

16                       (A) Chapter 2001, Occupations Code;

17                       (B) Chapter 2002, Occupations Code; ~~or~~

18                       (C) the Texas Racing Act (Article 179e, Vernon's  
19 Texas Civil Statutes); or

20                       (D) Subchapter K, Chapter 2153, Occupations  
21 Code, or a license issued under that subchapter;

22           (2) consisted entirely of participation in the state  
23 lottery authorized by Chapter 466, Government Code; or

24           (3) was a necessary incident to the operation of the  
25 state lottery and was directly or indirectly authorized by:

26                       (A) Chapter 466, Government Code;

27                       (B) the lottery division of the Texas Lottery

Commission;

(C) the Texas Lottery Commission; or

(D) the director of the lottery division of the Texas Lottery Commission.

(c) The defense provided by Subsection (a)(1)(D) does not apply to conduct committed in accordance with a license issued under Subchapter K, Chapter 2153, Occupations Code, if the actor obtained the license by false pretense, false statement, or material omission made in the license application or other manner.

SECTION 6. This Act does not attempt to supersede federal law or the Texas Constitution. If this Act is declared unconstitutional by a final judgment of a court with appropriate jurisdiction, this Act has no effect.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

(b) Section 2 of this Act takes effect September 1, 2005, and applies only to an offense committed on or after that date. An offense committed before that date is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.