

By: Flores

H.B. No. 2440

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of a tax on a prize awarded for play of a coin-operated amusement gaming machine.

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. OTHER TAXES

Sec. 2153.501. TAX ON AMUSEMENT GAMING MACHINE PRIZES. (a)

In this section, "coin-operated amusement gaming machine":

(1) means a device described by Section 47.01(4)(B), Penal Code, that would constitute a gambling device under Section 47.01(4), Penal Code, if it were not excluded from the definition of gambling device by Section 47.01(4)(B); and

(2) does not include:

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

(B) a machine 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.

(b) A machine covered by this section must be certified as a

1 coin-operated amusement gaming machine by the comptroller or a
2 competent private testing service that has contracted with the
3 comptroller to certify machines as coin-operated amusement gaming
4 machines.

5 (c) A tax is imposed on each cash or cash equivalent prize
6 awarded from play of a coin-operated amusement gaming machine to be
7 collected by the operator of the machine on behalf of the
8 comptroller. The amount of the tax is a percentage of the value of a
9 prize subject to the tax equal to the percentage of the sales price
10 of a taxable item that constitutes the sales tax rate imposed under
11 Chapter 151, Tax Code.

12 (d) Sections 2153.404 and 2153.407 apply to the tax imposed
13 by this section.

14 SECTION 2. Chapter 47, Penal Code, is amended by adding
15 Section 47.11 to read as follows:

16 Sec. 47.11. CERTIFICATION OF MACHINES. A person may not
17 claim a defense, affirmative defense, or exception to prosecution
18 for an offense under this chapter on the ground that a device was
19 excluded from the definition of gambling device by Section
20 47.01(4)(B) unless:

21 (1) at the time of the conduct the device was certified
22 as a coin-operated amusement gaming machine under Section 2153.501,
23 Occupations Code;

24 (2) the device awards the user noncash merchandise
25 prizes, toys, or novelties solely and directly from the machine,
26 including claw, crane, or similar machines; or

27 (3) the device is a device from which the opportunity

1 to receive a prize or a representation of value redeemable for a
2 prize varies depending on the user's ability to throw, roll, flip,
3 toss, hit, or drop a ball or other physical object into the machine
4 or a part of the machine, including basketball, skeeball, golf,
5 bowling, pusher, or similar machines.

6 SECTION 3. (a) Not later than January 1, 2004, the
7 comptroller shall establish procedures to certify coin-operated
8 amusement gaming machines or contract with a competent private
9 testing service to certify coin-operated amusement gaming machines
10 as required by Section 2153.501, Occupations Code, as added by this
11 Act.

12 (b) Notwithstanding Section 2153.501, Occupations Code, as
13 added by this Act, a tax is not imposed on a prize awarded from play
14 of a coin-operated amusement gaming machine until March 1, 2004.

15 SECTION 4. (a) Section 47.11, Penal Code, as added by this
16 Act applies only to an offense committed on or after March 1, 2004.
17 For purposes of this section, an offense is committed before that
18 date if any element of the offense occurs before that date.

19 (b) An offense committed before March 1, 2004, is covered by
20 the law in effect when the offense was committed, and the former law
21 is continued in effect for that purpose.

22 SECTION 5. This Act takes effect September 1, 2003, except
23 that Section 2 of this Act takes effect March 1, 2004.