

BILL ANALYSIS

C.S.H.B. 2708

By: Hancock

Insurance

Committee Report (Substituted)

BACKGROUND AND PURPOSE

Title 10 of the Insurance Code, Property and Casualty Insurance, does not currently address the issue of promotional event prize programs.

Currently, companies contract with marketing firms to design, organize and implement promotional events in order to promote a particular product or enhance name recognition. These transactions are executed by a written contract between two parties. Promotions can be designed to have one or multiple winners that can range from free tacos, cars or cash prizes. Examples of promotional event contracts executed in the state of Texas and carried out all over the country are: Dr Pepper's half time field goal contest for \$1,000,000.00, Taco Bell's free taco give away at sporting events and even the new hit TV show "Deal or No Deal". As part of the promotional contract a payment may be triggered to the sponsor based on a successful event.

There are several important reasons why the Texas Department of Insurance has not been involved in the business of promotional event programs. Unlike insurance, a fortuitous or accidental event does not trigger a payment under a promotional events contract. The promotional events are "designed or manufactured" to happen. Furthermore, an actual economic loss is not required to trigger a payment; and, most importantly, it is essential to note that all contracts specifically state that these promotional event programs are not insurance.

C.S.H.B 2708 adds Chapter 1810 to the Texas Insurance Code in order to clarify, in statute, the differences between "insurance" and "promotional events contracts". The bill would define promotional event prize programs and specify the requirements of a contract or transaction between parties involved in a promotional event prize program.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B 2708 amends Title 10, Texas Insurance Code by adding Chapter 1810 which concerns Promotional Event Prize Programs.

"Promotional event prize program" is defined as a written contract entered into in this state for commercial marketing or promotional purposes under which monetary risk is transferred from one or more parties to the contract to another party to the contract and that does not require as a condition precedent to the imposition of contractual liability on the part of the person accepting the risk: actual economic loss by the person who transfers the risk; or submission of proof of economic loss by the person transferring the risk and that specifically states that the contract is not for insurance and performance under the contract is not covered by any state guaranty association.

The bill further states that a promotional event prize program does not constitute the business of insurance in this state. A person's claim for performance under a contract for a promotional event prize program is not a covered claim under Chapter 462 and a promotional event prize program is not a covered claim by the Texas Property and Casualty Insurance Guaranty Association or any other state guaranty association.

C.S.H.B 2708 additionally specifies that there is certain marketing prohibited and that a promotional event prize program may not be marketed or described as insurance.

C.S.H.B. 2708 80(R)

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF SUBSTITUTE TO ORIGINAL:

C.S.H.B 2708 amends Section 1. Subtitle A, Title 10 of the Texas Insurance Code by adding Chapter 1810 to the Code which discusses promotional event prize programs. However, the original, H.B. 2708, related to what constitutes the business of insurance and set out to amend Section. 1 Subsection (b), Section 101.53 of the Texas Insurance Code by adding (9)(A-C).

Section 101.53(b)(9)(A-C), as added in the original House Bill, stated that a transaction in this state between two or more entities for commercial marketing or promotional purposes in which a monetary risk is transferred from one or more of the entities under a written contract that: contains a clear and conspicuous acknowledgement by the parties that the contract is not an insurance contract and is not protected by any state guaranty association; does not require any actual economic loss by the party transferring the risk as a condition precedent to imposing contractual liability on the party accepting the risk; and does not require submission of proof of economic loss by the party transferring the risk as a condition precedent to imposing contractual liability on the party accepting the risk. Sections 101.051 and 101.052 do not apply to transactions such as these.

Instead of adding to Section 101.53 (b) of the Texas Insurance Code, C.S.H.B 2708 distinctively creates a new chapter in Section 1. Subtitle A, Title 10 of the Texas Insurance Code entitled "Promotional Event Prize Programs". This chapter entails specifics as to the nature of certain promotional event prize programs. It includes definitions, programs not covered by guaranty association, and states that certain marketing prohibited.