

By: Goolsby

H.B. No. 3615

A BILL TO BE ENTITLED

AN ACT

relating to the regulation, operation, and taxation of certain coin-operated machines; providing a penalty.

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

SECTION 1. Section 2001.416, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A person on whom a tax is imposed under Section 191.064, Tax Code, may exhibit or display a music or skill or pleasure coin-operated machine that displays a valid tax permit issued under Section 2153.406 for use at a premises in which bingo is conducted by a licensed authorized organization under this chapter.

(f) A person who exhibits or displays a music or skill or pleasure coin-operated machine under Subsection (e) shall pay 10 percent of the net proceeds from the exhibition or display of the machine to the licensed authorized organization conducting bingo at the premises. If more than one organization is conducting bingo at the premises, the person shall pay each organization an amount equal to 10 percent of the net proceeds divided by the number of organizations that conduct bingo at the premises. In calculating net proceeds, the actual cost to the person of any personal property distributed to a patron as a prize may be deducted as a cost.

SECTION 2. Section 2153.005, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Subsection (a) does not apply to a corporation or

1 association that holds a Class B general business license or a Class
2 B import license.

3 SECTION 3. Section 2153.008, Occupations Code, is amended
4 to read as follows:

5 Sec. 2153.008. EXEMPT OWNERS OR EXHIBITORS. (a) Except as
6 provided by Subsection (b), a [A] person who owns or exhibits a
7 coin-operated machine is exempt from the licensing and
8 recordkeeping requirements of this chapter if the person:

9 (1) operates or exhibits the coin-operated machine
10 only on premises occupied by the person and in connection with the
11 person's business;

12 (2) does not own a coin-operated machine subject to
13 the tax imposed under this chapter and located on the business
14 premises of another person; and

15 (3) does not have a direct or indirect financial
16 interest in the music or skill or pleasure coin-operated machine
17 industry, except for ownership of the coin-operated machine
18 operated or exhibited on premises occupied by the person.

19 (b) Subsection (a) does not apply to a person who holds a
20 Class B general business license or a Class B import license.

21 SECTION 4. Section 2153.152, Occupations Code, is amended
22 by amending Subsections (a), (b), and (c) and adding Subsections
23 (e) and (f) to read as follows:

24 (a) A license applicant may apply for a general business
25 license, a Class B general business license, an import license, a
26 Class B import license, or a repair license.

27 (b) Except as provided by Subsection (e), a [A] general

1 business license holder may engage in the business of
2 manufacturing, owning, buying, selling, renting, leasing, trading,
3 maintaining, transporting or exhibiting in this state, or storing a
4 music or skill or pleasure coin-operated machine.

5 (c) Except as provided by Subsection (f), an [An] import
6 license holder may engage in the business of importing,
7 transporting, owning, buying, repairing, selling, or delivering a
8 music or skill or pleasure coin-operated machine for sale or
9 delivery in this state.

10 (e) A Class B general business license holder may engage in
11 the business of owning, buying, selling, renting, leasing, trading,
12 maintaining, transporting or exhibiting in this state, or storing a
13 music or skill or pleasure coin-operated machine on which a tax is
14 imposed by Section 191.064, Tax Code. The provisions of this
15 chapter relating to a general business license apply to a Class B
16 general business license, except as otherwise expressly provided.

17 (f) A Class B import license holder may engage in the
18 business of manufacturing, importing, transporting, owning,
19 buying, repairing, selling, or delivering a music or skill or
20 pleasure coin-operated machine on which a tax is imposed by Section
21 191.064, Tax Code. The provisions of this chapter relating to
22 import licenses apply to Class B import licenses except as
23 otherwise expressly provided.

24 SECTION 5. Subchapter G, Chapter 2153, Occupations Code, is
25 amended by adding Section 2153.3021 to read as follows:

26 Sec. 2153.3021. MANDATORY DENIAL OF CLASS B LICENSE. (a) A
27 person is not eligible for a Class B general business license if the

1 person:

2 (1) has been convicted of a felony, an offense under
3 Chapter 32 or 47, Penal Code, or a crime of moral turpitude and less
4 than 10 years has elapsed since the termination of a sentence,
5 parole, mandatory supervision, or community supervision served for
6 the offense;

7 (2) holds a Class B import license or is an owner,
8 officer, director, shareholder, agent, or employee of a person who
9 holds a Class B import license; or

10 (3) has greater than a 10 percent proprietary,
11 equitable, or credit interest in a person or entity described by
12 Subdivision (1) or (2) or is married or related in the first degree
13 by consanguinity or affinity to a person who has greater than a 10
14 percent proprietary, equitable, or credit interest in a person or
15 entity described by Subdivision (1) or (2).

16 (b) A person is not eligible for a Class B import license if
17 the person:

18 (1) has been convicted of a felony, an offense under
19 Chapter 32 or 47, Penal Code, or a crime of moral turpitude and less
20 than 10 years has elapsed since the termination of a sentence,
21 parole, mandatory supervision, or community supervision served for
22 the offense;

23 (2) holds a Class B general business license or is an
24 owner, officer, director, shareholder, agent, or employee of a
25 person who holds a Class B general business license; or

26 (3) has greater than a 10 percent proprietary,
27 equitable, or credit interest in a person or entity described by

1 Subdivision (1) or (2) or is married or related in the first degree
2 by consanguinity or affinity to a person who has greater than a 10
3 percent proprietary, equitable, or credit interest in a person or
4 entity described by Subdivision (1) or (2).

5 SECTION 6. Section 2153.305, Occupations Code, is amended
6 by adding Subsection (c) to read as follows:

7 (c) The comptroller shall refuse to issue or renew and shall
8 suspend or revoke a Class B general business license if the license
9 holder or applicant exhibits or displays a machine that fails to
10 record or transmit the information required by Section 191.067(b),
11 Tax Code.

12 SECTION 7. Section 2153.352(a), Occupations Code, is
13 amended to read as follows:

14 (a) The comptroller or an authorized representative of the
15 comptroller may seal a coin-operated machine in a manner that
16 prevents the full operation of the machine if:

17 (1) the license or registration certificate of the
18 person exhibiting or displaying the machine is suspended or
19 revoked;

20 (2) the owner fails to pay a tax on the machine; ~~or~~

21 (3) the machine is not registered with the comptroller
22 under this chapter; or

23 (4) the machine does not record or transmit the
24 information required by Section 191.067(b), Tax Code.

25 SECTION 8. Section 2153.406, Occupations Code, is amended
26 by adding Subsection (e) to read as follows:

27 (e) The comptroller may not issue a tax permit for any

1 machine that does not comply with the requirements of Section
2 191.067(b), Tax Code.

3 SECTION 9. Section 2153.451(b), Occupations Code, is
4 amended to read as follows:

5 (b) The [~~rate of the~~] tax may not exceed one-fourth of the
6 total of the taxes [~~rate of the tax~~] imposed under Section 2153.401
7 and Section 191.064, Tax Code.

8 SECTION 10. Chapter 191, Tax Code, is amended by adding
9 Subchapter D to read as follows:

10 SUBCHAPTER D. COIN-OPERATED AMUSEMENTS

11 Sec. 191.061. DEFINITION. In this subchapter,
12 "coin-operated amusement" means a music or skill or pleasure
13 coin-operated machine as defined by Section 2153.002, Occupations
14 Code.

15 Sec. 191.062. APPLICABILITY OF SUBCHAPTER. This subchapter
16 applies only to a coin-operated amusement that:

17 (1) is not a gambling device, as defined in Section
18 47.01, Penal Code;

19 (2) awards a prize that is not money, as defined in
20 Section 2002.002, Occupations Code; and

21 (3) awards only value on a stored value card as a
22 prize.

23 Sec. 191.063. STORED VALUE CARDS. (a) A stored value card
24 used in a coin-operated amusement under this chapter must:

25 (1) serve as evidence of a promise made by the person
26 who issued the card that the person will provide to the card owner
27 goods or services with a value equal to the amount of value stored

1 on the card;

2 (2) be refunded and allow for the redemption of the
3 amount of value stored on the card;

4 (3) be issued in the name of the card owner;

5 (4) not be capable of being exchanged for money;

6 (5) be capable of tracking the owner's usage of the
7 card;

8 (6) be issued by a financial institution, as defined
9 in Section 201.101, Finance Code; and

10 (7) be issued and activated at the location where the
11 coin-operated amusement prize will be awarded.

12 (b) A financial institution is liable for the amount of
13 value stored on each stored value card used in the operation of a
14 coin-operated amusement.

15 (c) A coin-operated amusement operator may not issue a
16 stored value card to a person unless the person:

17 (1) presents a valid government-issued identification
18 card or document that is immediately verified under applicable
19 federal law by the organization; and

20 (2) complies with all state and federal laws governing
21 the issuance of the card.

22 Sec. 191.064. TAX IMPOSED. (a) A tax is imposed on each
23 person holding a Class B license who engages in the business of
24 exhibiting or displaying a coin-operated amusement at a premises in
25 which bingo is conducted under Chapter 2001, Occupations Code.

26 (b) The tax imposed by this subchapter is in addition to any
27 other tax imposed by law.

1 Sec. 191.065. TAX RATE. (a) The rate of the tax imposed by
2 this subchapter is five percent of the net revenue of all
3 coin-operated amusements operated at a single premises or
4 enclosure.

5 (b) In calculating net revenue, the actual cost to the
6 operator of any personal property distributed to a patron as a prize
7 may be deducted from revenue.

8 Sec. 191.066. REPORT AND TAX PAYMENT. (a) A person subject
9 to the tax shall report the amount received from taxable services
10 during the preceding calendar month.

11 (b) The comptroller shall prescribe and furnish the form for
12 the report.

13 (c) A person subject to the tax shall pay the tax to the
14 comptroller at the comptroller's office in Austin not later than
15 the 20th day of each month.

16 Sec. 191.067. RECORD. (a) A person subject to the tax
17 shall keep a complete record of business transacted and any other
18 information the comptroller requires.

19 (b) A coin-operated amusement must:

20 (1) electronically record all operational
21 information, including all receipts and the value of all prizes
22 awarded; and

23 (2) instantaneously transmit the information required
24 in Subdivision (1) to the comptroller.

25 (c) The person shall keep all records open for inspection by
26 the comptroller for four years.

27 (d) The comptroller shall maintain a central data facility

1 to receive all information required to be transmitted under
2 Subsection (b) and shall adopt rules that establish technical
3 standards for the recording and transmission of the information.

4 Sec. 191.068. PENALTY. A person who violates this
5 subchapter forfeits and shall pay to the state a penalty of not less
6 than \$500 or more than \$5,000 in addition to any other tax, charge,
7 or penalty that may apply. Each day a violation occurs constitutes a
8 separate violation.

9 Sec. 191.069. FAILURE TO FILE REPORT OR PAY TAX. (a) If a
10 person taxed under this subchapter fails to file a report required
11 by this subchapter or to pay the tax imposed by this subchapter when
12 due, the person forfeits an amount equal to five percent of the
13 amount of tax due as a penalty. If the person fails to file the
14 report or pay the tax not later than the 30th day after the date on
15 which the tax or report is due, the person forfeits an additional
16 penalty equal to five percent of the amount of the tax.

17 (b) The minimum penalty imposed by this section is \$1.

18 Sec. 191.070. STATE TAX LIEN. The taxes, penalties,
19 interests, and costs that a person owes to this state under this
20 subchapter are secured by a preferred lien, first and prior to other
21 existing liens, contract or statutory, legal or equitable, on all
22 coin-operated amusements subject to the tax at the premises.

23 SECTION 11. As soon as practicable after the effective date
24 of this Act, the comptroller shall adopt rules necessary to
25 implement this Act and shall establish the central data facility
26 required under Section 191.067(d), Tax Code, as added by this Act.

27 SECTION 12. This Act takes effect September 1, 2007.