

BILL ANALYSIS

C.S.H.B. 222
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, it is illegal in Texas to conduct a public poker game that uses points or chips and gives away prizes at the end of the game or after a series of tournaments. However, many such games and tournaments are conducted throughout the state, and these activities place a strain on the scarce resources of the law enforcement community.

Legalizing public poker games and tournaments would clarify the responsibilities of law enforcement in regulating these games and would generate revenue for the state through licensing fees and a tax on the gross receipts received in connection with conducting poker gaming in Texas.

C.S.H.B. 222 authorizes public poker games and tournaments to be conducted in Texas under the supervision of the Texas Lottery Commission and establishes that the state receive a portion of the money from each game for deposit in a dedicated fund. A portion of the fund is used to pay the costs incurred by the state for the regulation of poker gaming, and the balance is transferred to the Texas Department of Housing and Community Affairs (TDHCA), with 50 percent of those funds distributed to municipalities, counties, and charities, and 50 percent to TDHCA's housing trust fund.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Lottery Commission in SECTIONS 1 and 9 of this bill, to the comptroller of public accounts in SECTION 1 of this bill, and to the Texas Racing Commission in SECTION 8 of this bill.

ANALYSIS

General Provisions

C.S.H.B. 222 amends the Occupations Code to require all poker gaming conducted in Texas and authorized by law to be regulated and licensed under these provisions unless state or federal law specifically provides otherwise. The bill exempts from these provisions the conduct of bingo, charitable raffles, the state lottery, and video poker and sets out legislative findings relating to poker and the conduct and regulation of poker gaming in Texas.

C.S.H.B. 222 establishes that poker gaming authorized under the bill's provisions is considered Class II gaming under the federal Indian Gaming Regulatory Act.

Texas Lottery Commission Powers and Duties

C.S.H.B. 222 enacts the Poker Gaming Act of 2009 and requires the Texas Lottery Commission to administer the bill's provisions. The bill establishes that the lottery commission has broad authority and requires the lottery commission to exercise strict control and close supervision over all poker gaming conducted in Texas to ensure that it is fairly conducted. The bill requires

the lottery commission to execute its authority through a poker gaming division established by the lottery commission to administer these provisions and to employ a director of poker gaming operations to administer the division under the direction of the lottery commission. The bill authorizes the lottery commission to employ officers or investigators as the lottery commission considers necessary to administer these provisions. The bill requires the lottery commission to adopt rules as necessary to enforce and administer these provisions and to provide by rule procedures for the approval of poker gaming equipment for use in Texas. The bill authorizes the lottery commission to approve an electronic poker table only if the table meets certain requirements. The bill prohibits the holder of a license issued under these provisions from using, selling, or distributing poker gaming equipment that has not been approved by the lottery commission. The bill requires the lottery commission to provide to any person on request a printed copy of these provisions and the rules applicable to their enforcement and authorizes the lottery commission to charge a reasonable fee for the copy provided. The bill authorizes a person to request from the lottery commission an advisory opinion regarding compliance with these provisions and lottery commission rules and sets out procedures for a person to submit and the lottery commission to respond to such a request. The bill prohibits a licensed owner or operator of a sexually oriented business from conducting poker gaming in Texas or holding a license issued under these provisions.

License to Conduct Poker Gaming

C.S.H.B. 222 creates a charitable operator's license and a commercial operator's license, issued by the Texas Lottery Commission, which authorize a person to conduct poker gaming in Texas. The bill authorizes poker gaming conducted by a commercial operator, including a charitable poker tournament conducted by the operator to benefit a licensed nonprofit organization, to be conducted only on premises operating in accordance with the operator's license. The bill authorizes poker gaming conducted by a charitable operator to be conducted only at a location specified in a permit authorizing the conduct of a charitable poker tournament. The bill establishes that these provisions do not prohibit a person from playing a poker game as authorized by other Texas laws. The bill prohibits a person from owning an equity interest in a location in Texas on which poker gaming is conducted by a commercial operator and for which a commercial operator's license is not in effect. The bill requires a separate commercial operator's license to be obtained for each location at which poker gaming is conducted by a commercial operator and, if the commercial operator is a federally recognized Indian tribe that meets certain requirements, requires the location at which poker gaming is conducted under that license to be on the tribe's reservation in Texas. The bill requires the lottery commission by rule to prescribe the maximum number of poker gaming tables a commercial operator may operate at a single location licensed by the lottery commission and requires a separate permit to be obtained for each charitable poker tournament conducted by a licensed operator.

C.S.H.B. 222 sets out the application requirements for a commercial operator's license and requires the lottery commission to issue such a license to an applicant who holds an alcoholic beverage license or permit issued by the Texas Alcoholic Beverage Commission (TABC) authorizing the applicant to sell or serve distilled spirits for on-premises consumption, who holds a pari-mutuel license issued by the Texas Racing Commission authorizing the applicant to conduct wagering on a greyhound race or a horse race, or who is a federally recognized Indian tribe that has a reservation in Texas, and who files and signs the required application, pays the required application fee, and meets any additional requirements prescribed by the lottery commission. The bill prohibits a person from applying for a commercial operator's license as an alcoholic beverage or pari-mutuel license holder unless for at least one of the three months preceding the date of the application the person paid the prescribed minimum in mixed beverage taxes on the gross receipts for the premises where the person intends to conduct poker gaming. The bill provides that those minimum requirements do not prohibit a person from applying for and receiving a commercial operator's license if the person is otherwise eligible for the license. The bill requires the lottery commission to revoke a commercial operator's license if the operator's alcoholic beverage license or permit or pari-mutuel license expires or is canceled or

revoked, and requires TABC and the racing commission to notify the lottery commission of any expiration or cancellation of an alcoholic beverage or pari-mutuel license. The bill prohibits the lottery commission from issuing a commercial operator's license to an applicant who is required under these provisions to utilize video surveillance equipment unless the applicant provides the video surveillance equipment required. The bill authorizes the lottery commission to adopt rules providing for a person's continued suitability to hold a commercial operator's license, and establishes that the opportunity to hold a commercial operator's license is a revocable privilege and not a right or property under the United States Constitution or the Texas Constitution. The bill provides that an applicant for or holder of a commercial operator's license does not have a vested interest or right in a license granted under these provisions.

C.S.H.B. 222 requires an applicant for a charitable operator's license to file with the lottery commission, in accordance with commission rules, an application that contains information set forth by these provisions and any additional information the lottery commission requires to determine the suitability and eligibility of the applicant to conduct poker gaming in Texas. The bill requires the lottery commission to determine the suitability of an applicant for or holder of a charitable operator's license based on criteria prescribed by the lottery commission and requires the lottery commission to adopt the rules and standards necessary to ensure that an applicant for a charitable operator's license or a charitable operator uses the revenue from a charitable poker tournament for bona fide charitable purposes. The bill provides that the burden of proving suitability to receive or hold a charitable operator's license is on the applicant or license holder and requires the lottery commission to issue a charitable operator's license to an eligible applicant if the lottery commission determines that the applicant is suitable under the commission's criteria. The bill authorizes the lottery commission to adopt rules providing for a person's continued suitability to hold a charitable operator's license and providing for the imposition of sanctions and penalties against a person who does not comply with these provisions or rules adopted under these provisions. The bill provides that the opportunity to hold a charitable operator's license is a revocable privilege and not a right or property under the United States Constitution or the Texas Constitution, and that an applicant for or holder of a charitable operator's license does not have a vested interest or right in a license granted under these provisions.

C.S.H.B. 222 establishes that a commercial operator's license applies only to the specific premises location identified in the license and provides that the license is not transferable to another person or location. The bill requires a person who directly or indirectly owns an equity interest or creditor interest in an applicant for or holder of a commercial operator's license to register and qualify with the lottery commission under commission rules and to provide information the lottery commission finds necessary to determine the suitability and eligibility of the person to retain the interest. The bill exempts from registration or qualification requirements under these provisions an employee of a licensed operator who is required to apply for an employee's license under these provisions, an institutional investor, or any other group or class of persons that the lottery commission by rule exempts from registration or qualification. The bill requires the lottery commission to adopt rules to implement the registration of a person with interest in a commercial operator, including rules establishing procedures for registration application, qualification, and renewal, and requires that a registration filed for these purposes be accompanied by the required application fee.

Nonprofit Organization License; Charitable Poker Tournament Permit

C.S.H.B. 222 creates a nonprofit organization license, which authorizes a licensed operator to conduct a charitable poker tournament to benefit a nonprofit organization. The bill requires a licensed operator to ensure that each nonprofit organization receiving any portion of the net proceeds of a charitable poker tournament conducted by the operator holds a license to conduct poker gaming issued by the Texas Lottery Commission under these provisions. The bill sets forth the application requirements for a nonprofit organization license, the requirements for determining the suitability of an applicant or a holder of a nonprofit organization license by the

lottery commission, and authorizes the lottery commission to adopt rules providing for a nonprofit organization's continued suitability to hold a nonprofit organization license and providing for the imposition of sanctions and penalties against an organization that does not comply with these provisions or rules adopted under these provisions. The bill establishes that the opportunity to hold a nonprofit organization license is a revocable privilege and not a right or property under the United States Constitution or the Texas Constitution, and that an applicant for or holder of a nonprofit organization license does not have a vested interest or right in the license. The bill authorizes a licensed operator to conduct a charitable poker tournament only for which the operator holds a permit to conduct such a tournament and establishes requirements for obtaining such a permit. The bill specifies that the permit is valid only for the hours, date, and location specified by the permit and authorizes a licensed operator to only operate the number of poker gaming tables specified in the permit at the charitable poker tournament. The bill authorizes a licensed operator to conduct a charitable poker tournament for the benefit of a licensed nonprofit organization, requires the operator to pay to a licensed nonprofit organization all net proceeds from a charitable poker tournament not later than the 30th day after the date of the tournament, and prohibits the expenses deducted by a licensed operator for conducting the tournament from exceeding 30 percent of gross receipts. The bill requires the expenses to be reasonable or necessary to conduct the poker gaming and authorizes which expenses may be included for these purposes. The bill requires a licensed nonprofit organization to use the proceeds from the charitable poker tournament for its charitable purposes.

C.S.H.B. 222 authorizes the lottery commission to deny an application for or suspend, limit, or revoke a nonprofit organization's license for any reasonable cause. The bill requires the lottery commission, for protection of the public health, safety, morals, and general welfare of the people of Texas and of the reputation of the state's poker gaming industry, to conduct an investigation and hearing and, based on the lottery commission's determination, authorizes the lottery commission to deny, suspend, limit, or revoke the license if the lottery commission determines that it has reasonable grounds to believe that a licensed nonprofit organization might be unsuitable to continue to hold the license. The bill prohibits a nonprofit organization that has had a license suspended or revoked from receiving, directly or indirectly, any proceeds, compensation, consideration, or payment of any kind relating to the conduct of a charitable poker tournament, other than a tournament that took place before the suspension or revocation.

Employee's Licenses

C.S.H.B. 222 creates a dealer's license, issued by the Texas Lottery Commission which authorizes a person to act as a poker dealer and requires a licensed operator to ensure that each dealer employed by the operator holds such a license. The bill sets forth the application requirements for a dealer's license and requires the lottery commission to conduct a criminal background check on each applicant. The bill establishes requirements for issuing and displaying a dealer's badge and provides that a person is eligible to apply for and hold a dealer's license without regard to the applicant's residency in Texas. The bill sets out requirements for determining the suitability of an applicant for or holder of a dealer's license, authorizes the lottery commission to deny an application for or suspend, limit, or revoke a dealer's license for any reasonable cause, and provides for the conduct of investigation and hearing by the lottery commission and its subsequent denial, suspension, limitation, or revocation of a dealer's license under certain conditions. The bill prohibits the license holder from providing services in any capacity requiring a dealer's license on the suspension or revocation of the license and specifies which services constitute prohibited services. The bill provides that the receipt and holding of a dealer's license is a privilege and is not a right or property under the United States Constitution or the Texas Constitution, and that an applicant for or holder of a dealer's license does not have a vested interest or right in the license. The bill requires a licensed dealer to complete a training program in accordance with lottery commission rule and sets out the topics that must be included in a training program, which must be approved by the lottery commission. The bill requires the lottery commission by rule to establish the content and time frame of the program, the information related to training that must be reported to the lottery commission, and other training

program requirements the lottery commission determines are necessary to promote the fair conduct of poker gaming and compliance with these provisions.

C.S.H.B. 222 authorizes the lottery commission to establish by rule other employee's licenses the lottery commission determines are necessary to protect the public health, safety, morals, and general welfare of the people of Texas, including licenses for principal managers, cage managers, owners, and card room service personnel. The bill prohibits a person from engaging in any conduct for which the lottery commission requires a person to hold an employee's license unless the person holds the applicable license. The bill requires the lottery commission by rule to prescribe procedures governing these licenses as the lottery commission determines appropriate.

Manufacturer's and Distributor's Licenses

C.S.H.B. 222 creates a manufacturer's license, which authorizes a person to engage in any activity related to the poker gaming equipment manufacturing industry in Texas for which a manufacturer's license is required. The bill requires the Texas Lottery Commission to adopt rules identifying activities related to the design, manufacture, assembly, production, sale, lease, marketing, distribution, or repair of poker gaming equipment in Texas for use in poker gaming that the lottery commission determines appropriate for a manufacturer's license. The bill specifies that a manufacturer's license is personal to the license holder and allows the holder to conduct business related to the licensed activity with any premises licensed to operate electronic poker tables and poker gaming in Texas.

C.S.H.B. 222 creates a distributor's license, which authorizes a person to distribute or offer to distribute poker gaming equipment for use in poker gaming in Texas, including electronic poker tables. The bill requires a person to obtain such a license to distribute poker gaming equipment in Texas to a licensed operator for use on premises at which poker gaming is conducted for profit. The bill specifies that a distributor's license is nontransferable and personal to the license holder and allows the holder to conduct business with any premises licensed to operate poker gaming in Texas.

C.S.H.B. 222 sets out the application requirements for a manufacturer's license and a distributor's license as well as the requirements for determining the suitability and eligibility of an applicant by the lottery commission. The bill requires the lottery commission to conduct an investigation and hearing and, based on the its determination, authorizes the lottery commission to deny, suspend, limit, or revoke a license under certain conditions and, if the applicant is an entity other than an individual, authorizes the lottery commission to investigate equity owners of the applicant who have at least a 10 percent ownership in the applicant. The bill prohibits a license holder from performing certain activities on suspension or revocation of the license. The bill authorizes a licensed operator who has entered into a lease with a manufacturer or distributor whose license has been suspended or revoked to continue to make payments on the lease. The bill specifies that the burden of proving suitability to receive or hold a manufacturer's or distributor's license is on the applicant or license holder.

License Renewal

C.S.H.B. 222 authorizes the Texas Lottery Commission, before issuing a license related to poker gaming, to issue a temporary license for a period not to exceed six months and authorizes the lottery commission to renew the temporary license as many times as the lottery commission determines appropriate on the payment of the fee and execution of the bond, if required. The bill authorizes the lottery commission to issue a temporary license only to a person the lottery commission believes will be qualified to hold the license based on review of the background investigations conducted by other state agencies or other government agencies in United States or Canadian jurisdictions with regulated poker gaming activities, and the lottery commission's determination that the background investigations of the applicant failed to reveal anything that would cause the applicant not to qualify for a license in Texas.

C.S.H.B. 222 provides that a license issued under the bill's provisions expires on the first anniversary of the date of issuance, but authorizes a license holder to annually renew a license by meeting the lottery commission's licensing requirements and paying the annual license fee. The bill requires a commercial operator, other than a federally recognized Indian tribe that has a reservation in Texas, to at all times hold an active alcoholic beverage license or permit issued by the Texas Alcoholic Beverage Commission (TABC) authorizing the operator to sell or serve distilled spirits for on-premises consumption or a pari-mutuel license issued by the Texas Racing Commission authorizing the applicant to conduct wagering on a greyhound race or a horse race. The bill establishes application and notification requirements relating to cancellation or revocation of these licenses or permits by TABC or the racing commission and requires the lottery commission to adopt rules for temporary suspension of a commercial operator's license pending reissuance of the license or reissuance of a permit to serve alcoholic beverages on the premises licensed by the lottery commission.

Application and License Fees

C.S.H.B. 222 sets out a schedule for the application fee and for the annual license fee each applicant for a license is required to pay based on the type of license and authorizes the Texas Lottery Commission to increase an application fee if the amount prescribed does not cover the lottery commission's cost of evaluating the application and issuing a license. The bill establishes that application fees are nonrefundable and requires that they be in the form prescribed by and payable to the lottery commission. The bill requires the lottery commission to apply an application fee toward the cost of investigating the applicant's suitability for licensing or qualification and requires the applicant to pay any costs of investigation incurred in excess of the assessed application fee.

Taxes

C.S.H.B. 222 provides that a tax is imposed on the gross receipts received in connection with the premises of a commercial operator conducting poker gaming. The bill specifies that the tax rate is 18 percent of the gross receipts received for poker gaming by a commercial operator, unless the commercial operator holds a pari-mutuel license, in which case the tax rate is 16 percent, or unless the gross receipts are received by a licensed operator during a charitable poker tournament, in which case the tax rate is five percent. The bill sets out requirements for the payment and reporting of the tax and requires the comptroller of public accounts and the Texas Lottery Commission to adopt rules for such payment. The bill requires a licensed operator required to file a tax return with the comptroller to provide a copy of the tax return to the lottery commission in the manner prescribed by lottery commission rule, and requires the comptroller to deposit the revenue collected to the credit of the poker gaming revenue fund, which the bill establishes as an account held outside the treasury. The bill sets forth the authorized uses for the money in the fund.

C.S.H.B. 222 prohibits a licensed operator that fails to deposit gross receipts tax due and payable to the comptroller for the gross receipts collected at the operator's premises by the prescribed deadline for payment of the tax from conducting poker gaming until the tax is paid. The bill requires the comptroller to electronically verify daily that the software for an electronic poker table is functioning properly and that the state has collected the gross receipts tax imposed on the gross receipts of the table and to electronically communicate with the table to permit the table to be operational that day. The bill requires the comptroller to develop rules providing minimum standards for electronic poker tables used for charitable gaming activities. The bill requires the comptroller to prohibit the operation of the electronic poker table if the gross receipts tax for such table has not been collected or the software for the table is not functioning properly. The bill requires the licensed operator to give the comptroller and the lottery commission assurances that the table will not open for play on that day or any subsequent day until all gross receipts tax, interest, and penalties have been paid, and requires the comptroller to adopt rules related to these

assurances. The bill requires the lottery commission to compute and determine the amount of taxes required to be paid and to assess certain penalties for failure to report or pay the taxes. The bill establishes the interest rates that accrue or attach to a delinquent tax based on the tax due date.

C.S.H.B. 222 establishes requirements for the lottery commission or the comptroller, if the lottery commission is not satisfied with a tax return or the amount of tax required to be remitted to Texas by a licensed operator, to recompute the tax. The bill authorizes a licensed operator subject to a tax to request an investigation and hearing at which the person may present evidence on the amount of tax due and requires the lottery commission to conduct an audit of the person's accounts as part of the investigation. The bill requires the lottery commission to estimate the gross receipts received by a licensed operator or person, if the operator fails to make a required return or if a person conducts poker gaming without a license, and establishes the time period the estimate must cover and the criteria for calculating the estimate. The bill requires the lottery commission, on the basis of the estimate, to compute and determine the amount of taxes imposed on those gross receipts and to assess a penalty equal to 10 percent of that tax amount. The bill authorizes one or more determinations to be made for one or more periods for these purposes.

C.S.H.B. 222 requires the lottery commission, if it believes the collection of a gross receipts tax or the amount of an estimated determination will be jeopardized by delay, to make a determination of the amount of the tax required to be collected and note the finding of jeopardy on the determination. The bill establishes that the determined amount is due and payable immediately. The bill provides for the determination of the final amount of the tax under certain conditions and for a delinquency penalty and annual interest on the tax required to be collected. The bill makes certain state tax laws applicable to the administration, collection, and enforcement of the gross receipts tax received in connection with the premises of a commercial operator conducting poker gaming.

C.S.H.B. 222 authorizes the lottery commission, at any time before the third anniversary of the date a person becomes delinquent in the payment of a gross receipts tax, to collect the amount and to order the sheriff or constable for the jurisdiction in which the applicable licensed poker gaming tables are located to conduct a seizure and sale, and sets out requirements for seizing and selling the property.

C.S.H.B. 222 requires each operator, not later than the fifth day after the date the licensed operator receives notice from the lottery commission of an order approving the application for an operator's license, to secure payment of the gross receipts tax and to furnish security in one of several forms listed in the bill and in an amount the commission considers appropriate, taking certain information into consideration. The bill authorizes the lottery commission to adjust the amount of security required after the licensed operator begins conducting poker gaming on the premises and paying gross receipts taxes, to notify the license holder and any surety of the delinquency by jeopardy or deficiency determination for failure to pay the gross receipts tax, and, if payment is not made when due, to order the forfeit of all or part of the security to cover the amount due. The bill requires the lottery commission, if the licensed operator ceases to conduct poker gaming and relinquishes the operator's license, to authorize the release of all security on a determination that no amounts of the gross receipts tax remain due and payable.

Regulation of Poker Gaming Operations

C.S.H.B. 222 requires the Texas Lottery Commission to adopt rules applicable to the operation of poker gaming at a licensed operator's premises as the lottery commission determines necessary for the protection of the public health, safety, morals, and general welfare of the people of Texas and of the reputation of Texas's poker gaming industry. The bill sets out requirements for the hours of operation of the premises covered by an operator's license, the table limits for each poker gaming table, and the fees for conducting a tournament. The bill specifies the required functions and features of, and servers and systems that must be used by an

electronic poker table and requires a licensed operator to establish on the operator's premises a bank to convert legal United States tender into chips or tokens and to convert chips or tokens into cash. The bill sets out requirements for the use of chips or tokens by a licensed operator and authorizes the lottery commission to inspect a licensed operator's chips or tokens to confirm compliance with the requirements. The bill establishes requirements for the playing cards used for poker gaming conducted by a licensed operator and requires that all poker rules used in poker gaming conducted by a licensed operator be submitted to and approved by the lottery commission.

C.S.H.B. 222 requires each employee of a licensed operator who handles cash, other than an employee employed to sell or serve alcoholic beverages, to be bonded. The bill establishes notification requirements for the bonding and requirements relating to the badge each licensed individual must wear during the operation of poker gaming.

C.S.H.B. 222 requires the lottery commission by rule to establish promotion bonus programs for bad beat hands and other bonus programs. The bill authorizes the programs to be statewide or limited to individual premises and sets out requirements for the award of a bonus and for related fees. The bill prohibits a promotion bonus program for bad beat hands or any other bonus program from being offered for a charitable poker tournament.

C.S.H.B. 222 requires each licensed operator to collect a collection fee on each poker hand played and requires the lottery commission to adopt rules necessary to administer collection fees. The bill prohibits a promotion bonus fee from exceeding \$1 per hand and requires it to be remitted to the state after certain deductions. The bill requires a pari-mutuel license holder conducting poker gaming in Texas to deposit in a purse fund two percent of the license holder's gross receipts from poker gaming and authorizes money in that fund to be expended only in accordance with rules adopted by the Texas Racing Commission under provisions of the Texas Racing Act.

C.S.H.B. 222 establishes reporting requirements for a licensed operator and specifies that the books and records kept by a licensed operator relating to poker gaming operations and the federal income tax returns the operator submits to the lottery commission are not public information. The bill prohibits the lottery commission from publishing and disseminating such materials and authorizes the lottery commission to publish and disseminate the total gross receipts of each licensed operator at the frequency and in the level of detail the lottery commission considers appropriate. The bill requires the lottery commission by rule to provide for the maintenance of a list of persons who are to be excluded or ejected from poker gaming premises and authorizes the list to include a person whose presence in poker gaming premises is determined by the lottery commission to pose a threat to the interests of Texas, to licensed poker gaming, or to both. The bill sets out the types of information the lottery commission is authorized to consider in making this determination. The bill requires a licensed operator to adopt an internal control system that provides for the safeguarding of its assets and revenues and sets forth the capabilities that must be ensured in the design of the system. The bill requires a licensed operator or an applicant for an operator's license to describe, in a manner approved or required by the director of poker gaming operations, the licensed operator's or applicant's administrative and accounting procedures in detail in a written system of internal control, and to submit a copy of the written system. The bill specifies what a written system must include and requires the lottery commission to adopt minimum standards for internal control procedures. The bill requires an electronic poker table's internal control system records to be created and maintained by the electronic poker table system and specifies the required capabilities of the system.

C.S.H.B. 222 prohibits a person younger than 21 years of age from being employed as a poker gaming employee or from playing, being allowed to play, placing wagers, or collecting a communal pot, personally or through an agent, or being present during poker gaming at any authorized premises. The bill requires, with certain exceptions, video surveillance of the poker

gaming conducted at each poker gaming table to be provided by the licensed operator with at least two video surveillance cameras dedicated to each poker gaming table. The bill requires the video cameras to have a clear, unobstructed view of the communal cards, chips, and dealers' hands. The bill establishes requirements for maintaining the video records and specifies that video surveillance is not required if all the poker gaming tables used on the premises licensed by the lottery commission are lottery-commission-approved electronic poker tables. The bill authorizes a player at a poker gaming table who disputes the decision of the dealer regarding the final disposition of an individual game to file a complaint with the licensed operator, who is required to attempt to resolve such a dispute immediately on receiving a complaint. The bill requires players in a poker game to make a formal complaint of the dispute to the lottery commission by the end of the next business day following the date of the poker game, requires the lottery commission to notify the licensed operator immediately of the complaint, and requires the operator to send to the lottery commission a copy of any video recording related to the complaint. The bill requires the lottery commission to adopt rules and develop forms for use by players for resolution of complaints submitted by players and to establish rules for surveillance at charitable poker tournaments.

C.S.H.B. 222 authorizes a licensed operator or an employee of the operator to question any person on the poker gaming premises who is suspected of violating these provisions and provides that the licensed operator or the operator's employee is not criminally or civilly liable as a result of the questioning or for reporting the person suspected of the violation to the director or law enforcement authorities. The bill prohibits a licensed operator from serving complimentary alcoholic beverages to a player on the operator's poker gaming premises.

Enforcement

C.S.H.B. 222 authorizes the Texas Lottery Commission to conduct an investigation for certain purposes and to conduct an audit of a license holder's books and records as part of the investigation. The bill requires the lottery commission to conduct an audit if the recomputation of taxes is at issue.

C.S.H.B. 222 requires the lottery commission's executive director, if the lottery commission is satisfied that a license, registration, finding of suitability, or prior approval by the lottery commission of a transaction should be limited, conditioned, suspended, or revoked, or that a fine should be imposed, to initiate a hearing by filing a complaint with the lottery commission and meeting other requirements. The bill sets forth the information the complaint must include and requires the executive director to serve a copy of the complaint on the respondent either personally or by registered or certified mail at the respondent's address on file with the executive director. The bill requires the respondent to file an answer with the executive director not later than the 30th day after the date of the service of the complaint. The bill establishes procedures for the lottery commission's review of the material presented in support of the complaint and for a hearing conducted by a hearing examiner appointed by the lottery commission. The bill authorizes the hearing examiner, after the proceedings, to recommend that the lottery commission take any appropriate action, including revocation, suspension, limitation, or conditioning of a license, finding of suitability, or prior approval, or imposition of a fine not to exceed \$5,000 for each violation. The bill requires the lottery commission to review the recommendation and authorizes the lottery commission to remand the case to the hearing examiner for presentation of additional evidence on a showing of good cause as to why the evidence could not be presented at the previous hearing. The bill requires the lottery commission to accept, reject, or modify the recommendation and requires the lottery commission to issue a written order if the lottery commission imposes certain sanctions. The bill authorizes a judicial review of a lottery-commission order or decision to be made under the Administrative Procedure Act and establishes that judicial review is under the substantial evidence rule.

C.S.H.B. 222 provides that certain communications or documents of an applicant or license holder are privileged and do not impose liability for defamation or constitute a ground for

recovery in a civil action. The bill specifies that if a document or communication contains information that is privileged, the privilege is not waived or lost because the document or communication is disclosed to the lottery commission. The bill prohibits the lottery commission from releasing or disclosing privileged information, documents, or communications provided by an applicant or license holder and required by a court order after timely notice of the proceedings has been given to the applicant or license holder without the prior written consent of the applicant or license holder. The bill requires the lottery commission to maintain all privileged information, documents, and communications in a secure place accessible only to lottery commission members and the executive director and to adopt procedures to protect the privileged nature of information, documents, and communications provided by an applicant or license holder. The bill establishes procedures for the release of confidential information by the lottery commission.

C.S.H.B. 222 authorizes the lottery commission to issue an emergency order to suspend, limit, or condition a license or finding of suitability or to require a licensed operator to keep an individual license holder from the premises or to not pay the holder any remuneration for services or any profits, income, or accruals on the licensed operator's investment in the premises, and sets forth the conditions under which the lottery commission may issue such an order and the information the order must contain. The bill authorizes such an order to be issued only with the approval of and under the signature of a majority of the lottery commission members, sets out the terms under which it is effective, and establishes that the order remains effective until further order of the lottery commission or final disposition of the case. The bill requires the executive director to file a complaint and serve it on the person involved not later than the fifth day after the date of issuance of an emergency order. The bill entitles a person against whom the emergency order has been issued and served to a hearing before the lottery commission and to judicial review of the decision and order of the lottery commission under the Administrative Procedure Act and specifies that judicial review is under the substantial evidence rule.

C.S.H.B. 222 entitles the lottery commission, the executive director of the lottery commission, and the director of poker gaming operations to conduct an investigation of and obtain criminal history record information maintained by the Texas Department of Public Safety (DPS), the Federal Bureau of Investigation identification division, or another law enforcement agency to assist in certain investigations. The bill requires the lottery commission, on each anniversary of the date of issuance of an operator's license, to obtain criminal history record information maintained by DPS on the licensed operator and on each holder of a 10 percent or greater equity or creditor interest in the licensed operator. The bill requires the lottery commission to obtain criminal history record information maintained by DPS on each licensed dealer or other employee, manufacturer, or distributor not later than the first anniversary after the date of each license renewal. The bill authorizes the lottery commission to deny an application for a license or to suspend or revoke a license or certificate of registration if the applicant fails on request to provide a complete legible set of fingerprints of a person required to be named in a license application. The bill authorizes the executive director or the director to request the cooperation of DPS to perform a background investigation and requires the lottery commission to reimburse DPS for the actual cost of an investigation. The bill authorizes the executive director to require a person who is subject to investigation to pay all costs of the investigation and to provide any information, including fingerprints, necessary to carry out the investigation or facilitate access to state or federal criminal history record information. The bill provides for the disposition of those payments; authorizes DPS, unless otherwise prohibited by law, to retain any record or information submitted to it for these purposes; and requires DPS to notify the executive director or the director of any change in information when DPS learns of the change.

Penalties and Offenses

C.S.H.B. 222 requires license fees and other fees required by these provisions to be paid to the Texas Lottery Commission on or before the dates provided by law for each fee and establishes minimum and maximum penalties for failing to timely pay a fee when due. The bill requires the

penalty to be collected in the same manner as other charges, license fees, and penalties under these provisions.

C.S.H.B. 222 makes it a Class A misdemeanor to wilfully fail to report, pay, or truthfully account for a fee imposed under these provisions or wilfully attempt in any manner to evade or defeat a fee; to knowingly possess any poker gaming device that has been manufactured, sold, or distributed in violation of these provisions; to make a statement or entry in a license application, a required book or record, or a required report that a person knows to be false or misleading or to knowingly fail to maintain or make an entry the person knows is required to be maintained or made; or to knowingly refuse to produce for inspection by the executive director a book, record, or document required to be maintained or made by these provisions or a rule adopted under these provisions. The bill makes it a Class A misdemeanor, unless another penalty is specified for the offense, to knowingly or wilfully violate, attempt to violate, or conspire to violate a provision specifying a prohibited act. The bill makes it a Class C misdemeanor to knowingly permit an individual younger than 21 years of age to participate in poker gaming at premises at which poker gaming is conducted, or for an individual younger than 21 years of age to participate in poker gaming at premises at which poker gaming is conducted.

C.S.H.B. 222 makes it a state jail felony to knowingly cheat at any poker game or to operate a poker gaming table without a license issued by the lottery commission or more than four poker gaming tables at the premises of a licensed operator. The bill makes it a felony of the third degree to knowingly commit certain acts of fraud related to poker gaming; to use or intend to use a device at a premises of a licensed operator, other than a device customarily used in the conduct of poker gaming, to assist in projecting the outcome of a poker game or analyzing the probability of the occurrence of an event relating to the game; to knowingly use counterfeit or unauthorized chips, tokens, or playing cards in a poker game, if playing a poker game designed to be played with chips or tokens approved by the lottery commission; for a person, other than an authorized employee of a licensed operator, to knowingly have on the person's body or in the person's possession on or off the premises where poker gaming is conducted a device intended to be used to violate these provisions; or for a person, other than an authorized employee of a licensed operator, to knowingly have on the person's body or in the person's possession on or off the premises a key or device known to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of a poker gaming table, a drop box, or an electronic or mechanical device connected to the table or box or for removing money or other contents from the table or box. The bill establishes that possession of more than one of the devices, equipment, products, or materials described above permits a rebuttable inference that the possessor intended to use them for cheating. The bill makes it a felony of the third degree to manufacture, sell, or distribute electronic poker tables, cards, chips, or a device intended for use in violating these provisions; to mark, alter, or otherwise modify any electronic poker tables, cards, chips, tokens, or poker gaming device; or to instruct another person in cheating or in the use of a device for cheating at any poker game authorized to be conducted at the premises of a licensed operator, with the knowledge or intent that the information or use may be employed to violate these provisions.

Definitions

C.S.H.B. 222 defines "alcoholic beverage," "badge," "bet," "bonus program," "cage manager," "charitable operator," "charitable poker tournament," "collection fee," "commercial operator," "commission," "communal pot," "company," "creditor interest," "dealer," "director," "distilled spirits," "electronic poker table," "equity interest," "executive director," "fidelity bond," "gross receipts," "licensed nonprofit organization," "licensed operator," "manufacturer," "net proceeds," "nonprofit organization," "pari-mutuel license holder," "player," "poker" or "poker game," "poker card deck," "poker gaming," "poker gaming equipment," "premises," "principal manager," "promotion bonus fee," and "wager."

Miscellaneous Provisions

C.S.H.B. 222 amends the Penal Code to include in provisions that make it a defense to prosecution under state laws making gambling and other conduct an offense that the actor reasonably believed that the conduct was permitted under the provisions of this bill. The bill includes in provisions that make it a defense to prosecution under state laws relating to gambling offenses that the conduct in question is authorized under provisions of the bill.

C.S.H.B. 222 amends the Tax Code to exempt an electronic or electromechanical gaming device that is intended to be used to conduct poker gaming from sales tax and certain other state tax provisions.

C.S.H.B. 222 amends the Government Code to make conforming changes.

C.S.H.B. 222 amends the Texas Racing Act to require the Texas Racing Commission to adopt rules to establish procedures governing the deposit, accounting, audit, investment, and use of money required to be deposited into a purse fund as provided by the bill to protect the public and ensure continued support for the racing industry in Texas, and authorizes the money deposited into the fund to be used only to promote the racing industry in Texas by providing money for competitive purses.

C.S.H.B. 222 requires the Texas Lottery Commission to adopt the rules, develop the applications and forms, and establish the procedures necessary to implement its provisions not later than January 1, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 222 adds a definition not in the original for "distilled spirits." The substitute differs from the original by defining the term "electronic poker table" to apply to multiple players, rather than to not more than 10 player positions as in the original. The substitute differs from the original by including in the definition of "poker gaming equipment" software for enabling poker gaming, and removing language relating to paraphernalia to facilitate poker gaming.

C.S.H.B. 222 adds a provision not in the original to establish that poker gaming authorized under this bill is considered Class II gaming under the federal Indian Gaming Regulatory Act.

C.S.H.B. 222 differs from the original by adding as a requirement for the Texas Lottery Commission to approve an electronic poker table that the table is not a video lottery terminal or an interactive electronic device with certain capabilities.

C.S.H.B. 222 differs from the original in reference to an alcoholic beverage license or permit issued by the Texas Alcoholic Beverage Commission (TABC) by specifying that the license or permit authorizes the applicant to sell or serve distilled spirits for on-premises consumption, rather than only to serve such beverages as in the original. The substitute differs from the original by requiring the lottery commission to revoke a commercial operator's license if the operator's alcoholic beverage license or permit or pari-mutuel license is canceled as well as expired or revoked as in the original.

C.S.H.B. 222 adds a provision not in the original authorizing the lottery commission, if an applicant for a manufacturer's license and a distributor's license is an entity rather than an individual, to investigate equity owners of the applicant who have at least a 10 percent ownership in the applicant.

C.S.H.B. 222 differs from the original by including as a basis for which the commissioner is authorized to issue a temporary license the lottery commission's review of the background investigations conducted by government agencies in Canadian jurisdictions with regulated poker gaming activities.

C.S.H.B. 222 differs from the original by requiring that the alcoholic beverage license or permit a commercial operator is required to hold at all times is an active license. The substitute differs from the original by requiring a commercial operator to immediately notify the lottery commission on suspension of an alcoholic beverage license, in addition to the cancellation of such a license as in the original. The substitute adds a provision not in the original to provide that a commercial operator's license is suspended at any time when any alcoholic beverage license or permit held by the operator is suspended.

C.S.H.B. 222 differs from the original by specifying that a licensed operator holding a TABC license or permit to sell or serve alcoholic beverages for on-premises consumption is only authorized to conduct poker gaming during the hours in which the license holder may sell or serve alcoholic beverages under the alcoholic beverage license or permit, rather than authorizing the license holder to conduct gaming at any time if the operator's hours of operation are not so limited as in the original. The substitute differs from the original by specifying that a licensed operator is authorized to conduct poker gaming on the premises covered by the operator's license at any time if the operator does not hold a TABC license or permit to sell or serve alcoholic beverages for on-premises consumption, rather than authorizing a licensed operator to elect other hours of operation, regardless of whether or not the operator has a TABC license or permit, as in the original.

C.S.H.B. 222 adds provisions not in the original and amends provisions in the original relating to the required hardware for and functionality of an electronic poker table.

C.S.H.B. 222 removes a provision from the original that includes any loss limits set for any player in the information a licensed operator is required to keep in its books and records.

C.S.H.B. 222 adds a provision not in the original requiring the internal control system records for an electronic poker table to be created and maintained by the electronic poker table system, and specifies the functions the system must perform for this purpose. The substitute adds a provision not in the original requiring video cameras to have a clear, unobstructed view of the communal cards, chips, and dealers' hands.