

By: Flynn

H.B. No. 82

A BILL TO BE ENTITLED

AN ACT

relating to the criminal offenses applicable to gambling and gambling devices.

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

SECTION 1. Section 47.01, Penal Code, is amended by amending Subdivisions (4) and (9) and adding Subdivisions (10) and (11) to read as follows:

(4) "Gambling device" means any device ~~[electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B)]~~ that for ~~[a]~~ consideration affords the player or user of the device an opportunity to obtain any thing ~~[anything]~~ of value, the award of which is determined solely or partially by chance, even though accompanied by some skill~~[, whether or not the prize is automatically paid by the contrivance]~~. The term~~[+]~~

~~[(A)]~~ includes, but is not limited to, a gambling device version ~~[versions]~~ of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or a facsimile of any of those games ~~[facsimiles thereof]~~, that:

(A) operates solely or partially ~~[operate]~~ by chance;

(B) ~~[or partially so, that]~~ as a result of the play or use ~~[operation]~~ of the game, awards ~~[award]~~ credits or free games; [7] and

1                    (C) records ~~[that record]~~ the number of free  
2 games or credits ~~[se]~~ awarded and the cancellation or removal of the  
3 free games or credits~~[, and~~

4                    ~~[(B) does not include any electronic,~~  
5 ~~electromechanical, or mechanical contrivance designed, made, and~~  
6 ~~adapted solely for bona fide amusement purposes if the contrivance~~  
7 ~~rewards the player exclusively with noncash merchandise prizes,~~  
8 ~~toys, or novelties, or a representation of value redeemable for~~  
9 ~~those items, that have a wholesale value available from a single~~  
10 ~~play of the game or device of not more than 10 times the amount~~  
11 ~~charged to play the game or device once or \$5, whichever is less].~~

12                    (9) "Thing of value" means any property, money, right,  
13 privilege, or other benefit, including a representation of value  
14 redeemable for any property, money, right, privilege, or other  
15 benefit ~~[but does not include an unrecorded and immediate right of~~  
16 ~~replay not exchangeable for value].~~

17                    (10) "Device" includes all or part of an electronic,  
18 electromechanical, or mechanical contrivance, machine, or  
19 apparatus.

20                    (11) "Bona fide amusement device" means a device on  
21 which an amusement game or other activity can be played or conducted  
22 for consideration and for which skill is the predominating  
23 requirement for a player or user of the device to win or be awarded a  
24 thing of value. The term does not include an electronic,  
25 electromechanical, or mechanical version of bingo, keno,  
26 blackjack, lottery, roulette, video poker, or similar game, or a  
27 facsimile of any of those games, that operates wholly or partially

1 by chance.

2 SECTION 2. Chapter 47, Penal Code, is amended by adding  
3 Section 47.091 to read as follows:

4 Sec. 47.091. DEFENSES FOR BONA FIDE AMUSEMENT DEVICE. (a)  
5 It is an affirmative defense to prosecution under Section 47.02  
6 that:

7 (1) the conduct consists entirely of the play or use of  
8 a bona fide amusement device; and

9 (2) the player or user may not win or be awarded a  
10 thing of value for playing or using the device other than:

11 (A) noncash merchandise available only on the  
12 premises where the device is located; or

13 (B) a ticket, coupon, or other representation of  
14 value redeemable only on the premises where the device is located  
15 for noncash merchandise.

16 (b) For purposes of Subsection (a):

17 (1) the noncash merchandise or representation of value  
18 redeemable for noncash merchandise that may be won or awarded for a  
19 single play of a game or use of the device may not have a wholesale  
20 value of more than the lesser of:

21 (A) 10 times the amount charged for the single  
22 play or use; or

23 (B) \$5; and

24 (2) an item of noncash merchandise that may be won or  
25 awarded for playing or using the device or for which a person may  
26 redeem one or more tickets, coupons, or other representations of  
27 value won or awarded for playing or using the device may not have a

1 wholesale value of more than \$50.

2       (c) It is an affirmative defense to prosecution under  
3 Section 47.03, 47.04, or 47.06 that the conduct consists of or is a  
4 necessary incident to offering, using, or maintaining one or more  
5 bona fide amusement devices used exclusively for conduct for which  
6 Subsection (a) provides an affirmative defense to a person playing  
7 or using the device, including the manufacturing, transporting,  
8 storing, or repairing of the device.

9       SECTION 3. Section 47.02(e), Penal Code, is repealed.

10       SECTION 4. (a) The change in law made by this Act applies  
11 only to an offense committed on or after the effective date of this  
12 Act. For purposes of this section, an offense is committed before  
13 the effective date of this Act if any element of the offense occurs  
14 before that date.

15       (b) An offense committed before the effective date of this  
16 Act is covered by the law in effect when the offense was committed,  
17 and the former law is continued in effect for that purpose.

18       SECTION 5. This Act takes effect September 1, 2011.