

By: Zaffirini

S.B. No. 1245

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to local option elections to legalize or prohibit the  
3 operation of eight-liners and the imposition of a fee on  
4 eight-liner owners; providing penalties.

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

6 SECTION 1. Title 17, Election Code, is amended by adding  
7 Chapter 502 to read as follows:

8 CHAPTER 502. LOCAL OPTION ELECTIONS ON OPERATION OF EIGHT-LINERS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 502.001. DEFINITION. In this chapter, "eight-liner"  
11 has the meaning assigned by Section 47.01, Penal Code.

12 [Sections 502.002-502.020 reserved for expansion]

13 SUBCHAPTER B. MANNER OF CALLING ELECTION

14 Sec. 502.021. ELECTION TO BE HELD. On proper petition by  
15 the required number of voters of a county or of a justice precinct  
16 or municipality in the county, the commissioners court of the  
17 county shall order a local option election in that political  
18 subdivision to determine whether the operation of eight-liners  
19 shall be legalized or prohibited in the political subdivision.

20 Sec. 502.022. QUALIFICATION FOR POLITICAL SUBDIVISION TO  
21 HOLD ELECTION. A political subdivision may not hold a local option  
22 election to legalize or prohibit the operation of eight-liners in  
23 the political subdivision unless the political subdivision has been  
24 in existence for at least 18 months.

1       Sec. 502.023. APPLICATION FOR PETITION. (a) On written  
2 application of 10 or more qualified voters of any county or of a  
3 justice precinct or municipality in the county that includes proof  
4 of publication of the application in a newspaper of general  
5 circulation in that political subdivision not earlier than the 30th  
6 day before the date the petition is filed, the county clerk of the  
7 county shall issue to the applicants a petition to be circulated  
8 among and signed by the qualified voters of the political  
9 subdivision requesting that a local option election be called to  
10 determine whether the operation of eight-liners shall be legalized  
11 or prohibited in the political subdivision.

12       (b) Not later than the fifth day after the date the petition  
13 is issued, the county clerk shall notify the secretary of state that  
14 the petition has been issued.

15       Sec. 502.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
16 FOR PETITION TO LEGALIZE. (a) An application for a petition  
17 requesting an election to legalize the operation of eight-liners  
18 must include the heading: "Application for Local Option Election  
19 Petition to Legalize the Operation of Eight-Liners."

20       (b) The application must contain the following statement of  
21 the issue to be voted on, immediately preceding the signatures of  
22 the applicants: "It is the purpose and intent of the applicants  
23 whose signatures appear on this application to legalize the  
24 operation of eight-liners in (name of political subdivision)."

25       Sec. 502.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION  
26 FOR PETITION TO PROHIBIT. (a) An application for a petition  
27 requesting an election to prohibit the operation of eight-liners

1 must include the heading: "Application for Local Option Election  
2 Petition to Prohibit the Operation of Eight-Liners."

3 (b) The application must contain the following statement of  
4 the issue to be voted on, immediately preceding the signatures of  
5 the applicants: "It is the purpose and intent of the applicants  
6 whose signatures appear on this application to prohibit the  
7 operation of eight-liners in (name of political subdivision)."

8 Sec. 502.026. PETITION REQUIREMENTS. A petition must  
9 include the date the petition is issued by the county clerk and be  
10 serially numbered. Each page of the petition must bear the same  
11 date and serial number and the actual seal of the county clerk  
12 rather than a facsimile of that seal.

13 Sec. 502.027. HEADING AND STATEMENT ON PETITION TO  
14 LEGALIZE. (a) Each page of the petition for a local option  
15 election to legalize the operation of eight-liners must include the  
16 heading: "Petition for Local Option Election to Legalize the  
17 Operation of Eight-Liners."

18 (b) The petition must contain the following statement of the  
19 issue to be voted on, immediately preceding the signatures of the  
20 petitioners: "It is the purpose and intent of the petitioners whose  
21 signatures appear on this petition to legalize the operation of  
22 eight-liners in (name of political subdivision)."

23 Sec. 502.028. HEADING AND STATEMENT ON PETITION TO  
24 PROHIBIT. (a) Each page of the petition for a local option  
25 election to prohibit the operation of eight-liners must include the  
26 heading: "Petition for Local Option Election to Prohibit the  
27 Operation of Eight-Liners."

1       (b) The petition must contain the following statement of the  
2 issue to be voted on, immediately preceding the signatures of the  
3 petitioners: "It is the purpose and intent of the petitioners whose  
4 signatures appear on this petition to prohibit the operation of  
5 eight-liners in (name of political subdivision)."

6       Sec. 502.029. OFFENSE: MISREPRESENTATION OF PETITION. (a)  
7 A person commits an offense if the person misrepresents the purpose  
8 or effect of a petition issued under this chapter.

9       (b) An offense under this section is a Class B misdemeanor.

10       Sec. 502.030. COPIES OF PETITION. (a) The county clerk  
11 shall provide the number of copies of the petition required by the  
12 applicants provided the number of pages does not exceed one page for  
13 every 10 registered voters of the county or of a justice precinct or  
14 municipality in the county. Each copy must bear the date, number,  
15 and seal on each page as required on the original petition.

16       (b) The county clerk shall keep a copy of each petition and a  
17 record of the applicants for the petition.

18       Sec. 502.031. VERIFICATION OF PETITION. (a) The voter  
19 registrar of the county shall check the names of the signers of  
20 petitions and the voting precincts in which the signers reside to  
21 determine whether the signers were qualified voters of the county  
22 or of a justice precinct or municipality in the county at the time  
23 the petition was issued. The registrar may use a statistical  
24 sampling method to verify the signatures, except that on written  
25 request from a citizen of the political subdivision for which an  
26 election is sought, the registrar shall verify each signature on  
27 the petition. The citizen requesting the verification shall pay

1 the reasonable cost of the verification. The registrar shall  
2 certify to the commissioners court the number of qualified voters  
3 signing the petition.

4 (b) A petition signature may not be counted unless:

5 (1) the signature is the actual signature of the  
6 purported signer;

7 (2) the petition contains in addition to the  
8 signature:

9 (A) the signer's printed name;

10 (B) the signer's date of birth;

11 (C) if the territory from which signatures must  
12 be obtained is situated in more than one county, the county of  
13 registration;

14 (D) the signer's residence address; and

15 (E) the date of signing; and

16 (3) the petition complies with any other applicable  
17 requirements prescribed by law.

18 (c) The use of ditto marks or abbreviations does not  
19 invalidate a signature if the required information is reasonably  
20 ascertainable.

21 (d) The omission of the state from the signer's residence  
22 address does not invalidate a signature unless the political  
23 subdivision from which the signature is obtained is situated in  
24 more than one state. The omission of the zip code from the address  
25 does not invalidate a signature.

26 (e) The signature is the only entry on the petition that is  
27 required to be in the signer's handwriting.

1       (f) A signer may withdraw the signer's signature by deleting  
2 the signature from the petition or by filing with the voter  
3 registrar an affidavit requesting that the signature be withdrawn  
4 from the petition. A signer may not withdraw the signature from a  
5 petition on or after the date the petition is received by the  
6 registrar. A withdrawal affidavit filed by mail is considered to be  
7 filed at the time of its receipt by the registrar. The withdrawal  
8 of a signature nullifies the signature on the petition and places  
9 the signer in the same position as if the signer had not signed the  
10 petition.

11       Sec. 502.032. REQUIREMENTS TO ORDER ELECTION. (a) The  
12 commissioners court, at its next regular session on or after the  
13 30th day after the date the petition is filed, shall order a local  
14 option election to be held on the issue set out in a petition that  
15 complies with the requirements of Subsection (b).

16       (b) The petition must:

17               (1) be filed with the voter registrar not later than  
18 the 60th day after the date the petition is issued; and

19               (2) bear the signatures of a number of qualified  
20 voters of the political subdivision equal to at least 35 percent of  
21 the registered voters of the subdivision who voted in the most  
22 recent gubernatorial election.

23       (c) A voter whose name appears on the list of registered  
24 voters with the notation "S," or a similar notation, shall be  
25 excluded from the computation of the number of registered voters of  
26 a particular territory.

27       Sec. 502.033. RECORD IN MINUTES. The commissioners court

1 shall enter in its minutes the date a petition is presented, the  
2 names of the signers, and the action taken with respect to the  
3 petition.

4 Sec. 502.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)  
5 The election order must state in its heading and text whether the  
6 local option election to be held is for the purpose of legalizing or  
7 prohibiting the operation of eight-liners as set out in the issue  
8 recited in the application and petition.

9 (b) The order must state the issue to be voted on in the  
10 election.

11 Sec. 502.035. BALLOT. The ballot in an election to legalize  
12 or prohibit the operation of eight-liners shall be prepared to  
13 permit voting for or against: "The legal operation of eight-liners  
14 in (name of political subdivision)."

15 Sec. 502.036. EVIDENCE OF VALIDITY. The commissioners  
16 court election order is prima facie evidence of compliance with all  
17 provisions necessary to give the order validity or to give the  
18 commissioners court jurisdiction to make the order valid.

19 Sec. 502.037. FREQUENCY OF ELECTIONS. A local option  
20 election on a particular issue may not be held in a political  
21 subdivision until after the first anniversary of the date of the  
22 most recent local option election in that political subdivision on  
23 that issue.

24 [Sections 502.038-502.100 reserved for expansion]

25 SUBCHAPTER C. HOLDING OF ELECTION

26 Sec. 502.101. APPLICABILITY OF ELECTION CODE. Except as  
27 provided by this chapter, the officers holding a local option

1 election shall hold the election in the manner provided by this  
2 code.

3 Sec. 502.102. ELECTION PRECINCTS. (a) County election  
4 precincts shall be used for a local option election to be held in an  
5 entire county or in a justice precinct.

6 (b) Election precincts established by the governing body of  
7 the municipality for its municipal elections shall be used for a  
8 local option election to be held in a municipality. If the  
9 governing body has not established precincts for its municipal  
10 elections, the commissioners court shall prescribe the election  
11 precincts for the local option election under the law governing  
12 establishment of precincts for municipal elections.

13 Sec. 502.103. ISSUE ON BALLOT. (a) The issue ordered to  
14 appear on the ballot for an election ordered by the commissioners  
15 court must be the same as the issue applied for and set out in the  
16 petition.

17 (b) The ballot must include the language required under  
18 Section 502.035.

19 Sec. 502.104. COUNTY PAYMENT OF ELECTION EXPENSES. The  
20 county shall pay the expense of holding a local option election  
21 authorized by this chapter in the county or in a justice precinct or  
22 municipality in the county except that:

23 (1) if an election is to be held only within the  
24 corporate limits of a municipality located wholly within the  
25 county, the county may require the municipality to reimburse the  
26 county for all or part of the expenses of holding the local option  
27 election;



1           (2) county payment of the expense of an election to  
2 legalize the operation of eight-liners is limited to the holding of  
3 one election in a political subdivision during a one-year period;  
4 and

5           (3) county payment of the expense of an election to  
6 prohibit the operation of eight-liners is limited to the holding of  
7 one election in a political subdivision during a one-year period.

8           Sec. 502.105. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS;  
9 OFFENSE. (a) If a county is not required to pay the expense of a  
10 local option election under Section 502.104, the county clerk shall  
11 require the applicants for a petition for a local option election to  
12 make a deposit before the issuance of the petition.

13           (b) The deposit must be in the form of a cashier's check in  
14 an amount equal to 25 cents per voter listed on the current list of  
15 registered voters residing in the county or in a justice precinct or  
16 municipality in the county where the election is to be held.

17           (c) The money received shall be deposited in the county's  
18 general fund. A refund may not be made to the applicants regardless  
19 of whether the petition is returned to the county clerk or the  
20 election is ordered.

21           (d) The county clerk may not issue a petition to the  
22 applicants unless a deposit required by this chapter is made.

23           (e) A person who violates Subsection (d) commits an offense.  
24 An offense under this subsection is a misdemeanor punishable by:

25           (1) a fine of not less than \$200 nor more than \$500;

26           (2) confinement in the county jail for not more than 30  
27 days; or

1           (3) both the fine and confinement.

2           Sec. 502.106. ELECTION IN CERTAIN MUNICIPALITIES. (a)

3 This section applies only to an election to legalize or prohibit the  
4 operation of eight-liners in a municipality that is located in more  
5 than one county.

6           (b) An election to which this section applies shall be  
7 conducted by the municipality instead of the counties. For the  
8 purposes of an election conducted under this section, a reference  
9 in this chapter to:

10           (1) the county is considered to refer to the  
11 municipality;

12           (2) the commissioners court is considered to refer to  
13 the governing body of the municipality;

14           (3) the county clerk or voter registrar is considered  
15 to refer to the secretary of the municipality or, if the  
16 municipality does not have a secretary, to the person performing  
17 the functions of a secretary of the municipality; and

18           (4) the county judge is considered to refer to the  
19 mayor of the municipality or, if the municipality does not have a  
20 mayor, to the presiding officer of the governing body of the  
21 municipality.

22           (c) The municipality shall pay the expense of the election.

23           (d) An action to contest the election under Section 502.155  
24 may be brought in the district court of any county in which the  
25 municipality is located.

26           [Sections 502.107-502.150 reserved for expansion]

1           SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

2           Sec. 502.151. DECLARATION OF RESULT. (a) On completing the  
3 canvass of the election returns, the commissioners court shall  
4 issue an order declaring the election result, and the clerk of the  
5 commissioners court shall record the order as provided by law.

6           (b) In a legalization election, if a majority of the votes  
7 cast favor legalizing the operation of eight-liners in the  
8 political subdivision, the operation of eight-liners within the  
9 boundaries of the political subdivision is legal on the entering of  
10 the court's order. The legalization remains in effect until  
11 changed by a subsequent local option election held under this code.

12           (c) In a prohibitory election, if a majority of the votes  
13 cast do not favor the legal operation of eight-liners in the  
14 political subdivision, the court's order must state that the  
15 operation of eight-liners within the boundaries of the political  
16 subdivision is prohibited effective on the 30th day after the date  
17 the order is entered. The prohibition remains in effect until  
18 changed by a subsequent local option election held under this  
19 chapter.

20           (d) The local option status of a political subdivision does  
21 not change as a result of the election if:

22                   (1) in an election described by Subsection (c), less  
23 than a majority of the votes cast do not favor the issue; and

24                   (2) in an election described by Subsection (b), less  
25 than a majority of the votes cast favor the issue.

26           Sec. 502.152. ORDER PRIMA FACIE EVIDENCE. The order of the  
27 commissioners court declaring an election result is prima facie

1 evidence that all provisions of law have been complied with in  
2 giving notice of and holding the election, counting and returning  
3 the votes, and declaring the result of the election.

4 Sec. 502.153. CERTIFICATION OF RESULT. Not later than the  
5 third day after the date the result of a local option election has  
6 been declared, the county clerk shall certify the result to the  
7 secretary of state. The clerk may not charge a fee for this  
8 service.

9 Sec. 502.154. POSTING ORDER PROHIBITING OPERATION. (a) A  
10 commissioners court order declaring the result of a local option  
11 election and prohibiting the operation of eight-liners within the  
12 boundaries of a political subdivision must be published by posting  
13 the order at three public places in the political subdivision in  
14 which the election was held.

15 (b) The posting of the order shall be recorded in the  
16 minutes of the commissioners court by the county judge. The entry  
17 in the minutes or a copy certified under the hand and seal of the  
18 county clerk is prima facie evidence of the posting.

19 Sec. 502.155. ELECTION CONTEST. (a) The enforcement of  
20 local option laws in the political subdivision in which an election  
21 is being contested is not suspended during an election contest.

22 (b) The result of an election contest finally settles all  
23 questions relating to the validity of that election. A person may  
24 not call the legality of that election into question again in any  
25 other suit or proceeding.

26 (c) If an election contest is not timely instituted, it is  
27 conclusively presumed that the election is valid and binding in all

1 respects on all courts.

2 [Sections 502.156-502.200 reserved for expansion]

3 SUBCHAPTER E. MISCELLANEOUS LOCAL OPTION PROVISIONS

4 Sec. 502.201. LOCAL OPTION STATUS OF AREA. (a) In a  
5 criminal prosecution, all trial courts of this state shall take  
6 judicial notice of whether the operation of eight-liners is legal  
7 or prohibited in an area.

8 (b) In an information, complaint, or indictment, an  
9 allegation that the operation of eight-liners is prohibited in an  
10 area is sufficient, but a different status of the area may be urged  
11 and proved as a defense.

12 Sec. 502.202. CHANGE OF STATUS. Except as provided in  
13 Section 502.203, an authorized voting unit that has exercised or  
14 may exercise the right of local option retains the status adopted  
15 until that status is changed by a subsequent local option election  
16 in the same authorized voting unit.

17 Sec. 502.203. PREVAILING STATUS: RESOLUTION OF CONFLICTS.  
18 To ensure that each voter has the maximum possible control over the  
19 status of the operation of eight-liners in the area where the voter  
20 resides:

21 (1) the status that resulted from or is the result of a  
22 duly called election for a municipality prevails against the status  
23 that resulted from or is the result of an election in a justice  
24 precinct or county in which the municipality or any part of the  
25 municipality is contained; and

26 (2) the status that resulted from or is the result of  
27 an election for a justice precinct prevails against the status that

1 resulted from or is the result of an election in a municipality in  
2 which the justice precinct is wholly contained or in a county in  
3 which the justice precinct is located.

4 Sec. 502.204. CHANGE IN PRECINCT BOUNDARIES. (a) When a  
5 local option status is in effect as the result of the vote in a  
6 justice precinct, the status shall remain in effect until the  
7 status is changed as the result of a vote in the same territory that  
8 constituted the precinct when the status was established. If the  
9 boundaries of the justice precinct have changed since the status  
10 was established, the commissioners court shall, for purposes of a  
11 local option election, define the boundaries of the original  
12 precinct. A local option election may be held within the territory  
13 defined by the commissioners court as constituting the original  
14 precinct.

15 (b) Nothing in this section is intended to affect the  
16 operation of Section 502.203.

17 (c) Section 502.104, relating to the payment of local option  
18 election expenses, applies to elections held in a territory that is  
19 defined in accordance with Subsection (a).

20 SECTION 2. Section 2153.002, Occupations Code, is amended  
21 by amending Subdivision (1) and adding Subdivision (2-a) to read as  
22 follows:

23 (1) "Coin-operated machine" means any kind of machine  
24 or device operated by or with a coin or other United States  
25 currency, metal slug, token, electronic card, or check, including a  
26 music or skill or pleasure coin-operated machine. The term does not  
27 include an eight-liner.

1           (2-a) "Eight-liner" has the meaning assigned by  
2 Section 47.01, Penal Code.

3           SECTION 3. Chapter 2153, Occupations Code, is amended by  
4 adding Subchapter K to read as follows:

5                   SUBCHAPTER K. FEE ON EIGHT-LINERS

6           Sec. 2153.501. IMPOSITION OF FEE. (a) A fee is imposed on  
7 each eight-liner that an owner exhibits or displays, or permits to  
8 be exhibited or displayed, in this state.

9           (b) The amount of the fee is \$350 per year.

10          Sec. 2153.502. EXEMPTION. The fee imposed under this  
11 subchapter does not apply to an owner of an eight-liner if the owner  
12 possesses the eight-liner for resale only.

13          Sec. 2153.503. PRORATED FEE. The fee on an eight-liner  
14 first exhibited or displayed in this state after March 31 of any  
15 year is one-fourth of the amount imposed under Section 2153.501 for  
16 each quarter or partial quarter of the calendar year remaining  
17 after the date the owner first exhibits or displays the  
18 eight-liner.

19          Sec. 2153.504. COLLECTION. (a) The comptroller shall  
20 collect the fee.

21          (b) In collecting the fee, the comptroller may:

22               (1) collect the fee on a quarterly basis;

23               (2) establish procedures for quarterly collection of  
24 the fee; and

25               (3) establish dates on which the fee payment is due.

26          (c) An owner required to pay a fee under this section shall  
27 pay the fee to the comptroller by cashier's check or money order.

1       Sec. 2153.505. ALLOCATION OF REVENUE. (a) The comptroller  
2 shall deposit 30 percent of each fee collected under this  
3 subchapter to the credit of the general revenue fund.

4       (b) For an eight-liner located in a municipality, the  
5 comptroller shall remit 70 percent of the fee collected under this  
6 subchapter to the municipality in which the eight-liner is located.

7       (c) For an eight-liner located outside a municipality, the  
8 comptroller shall remit 70 percent of the fee collected under this  
9 subchapter to the county in which the eight-liner is located.

10       (d) The comptroller shall remit fee revenue to a  
11 municipality or county under this section as soon as feasible after  
12 collecting the fee.

13       Sec. 2153.506. REFUND OR CREDIT PROHIBITED. The comptroller  
14 may not refund or assign credit for the fee imposed under this  
15 subchapter to an owner who ceases to exhibit or display an  
16 eight-liner before the end of the calendar year for which the fee is  
17 imposed.

18       Sec. 2153.507. FEE PERMIT. (a) The comptroller shall issue  
19 a fee permit to an owner who pays the fee.

20       (b) The comptroller may issue a duplicate fee permit to an  
21 owner if the owner's fee permit is lost, stolen, or destroyed. The  
22 fee for a duplicate permit is \$5.

23       (c) A fee permit shall be securely attached to the  
24 eight-liner for which the permit is issued in a manner that requires  
25 the continued application of steam and water to remove the permit.

26       Sec. 2153.508. APPLICABILITY OF TAX CODE. Subtitle B, Title  
27 2, Tax Code, applies to the administration, collection, and



1 enforcement of taxes, penalties, and interest under this  
2 subchapter.

3 SECTION 4. Section 47.01, Penal Code, is amended by  
4 amending Subdivisions (4) and (9) and adding Subdivisions (10),  
5 (11), and (12) to read as follows:

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

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

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

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

23 (C) records [~~that record~~] the number of free  
24 games or credits [~~so~~] awarded and the cancellation or removal of the  
25 free games or credits[~~, and~~

26 [~~(B) does not include any electronic,~~  
27 ~~electromechanical, or mechanical contrivance designed, made, and~~

1 ~~adapted solely for bona fide amusement purposes if the contrivance~~  
2 ~~rewards the player exclusively with noncash merchandise prizes,~~  
3 ~~toys, or novelties, or a representation of value redeemable for~~  
4 ~~those items, that have a wholesale value available from a single~~  
5 ~~play of the game or device of not more than 10 times the amount~~  
6 ~~charged to play the game or device once or \$5, whichever is less].~~

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

12           (10) "Device" includes all or part of an electronic,  
13 electromechanical, or mechanical contrivance, machine, or  
14 apparatus.

15           (11) "Eight-liner" means an electronic device capable  
16 of simulating the play of a traditional mechanical slot machine, or  
17 one-armed bandit, regardless of the number of lines of play, that  
18 for the payment of consideration affords a player of the device an  
19 opportunity to win a prize based solely or partially on chance, if  
20 the prize from a single play of the game consists of:

21                   (A) cash in an amount of \$1,500 or less; or

22                   (B) noncash merchandise, or a representation of  
23 value redeemable for noncash merchandise, that has a wholesale  
24 value of \$1,500 or less.

25           (12) "Bona fide amusement device" means a device on  
26 which an amusement game or other activity can be played or conducted  
27 for consideration, for which skill is the predominating requirement

1 for a player of the game to win or be awarded a thing of value. The  
2 term does not include:

- 3                   (A) an eight-liner; or  
4                   (B) an electronic, electromechanical, or  
5 mechanical version of bingo, keno, blackjack, lottery, roulette,  
6 video poker, or a similar game, or a facsimile of any of those  
7 games, that operates solely or partially by chance.

8           SECTION 5. Section 47.02(c), Penal Code, is amended to read  
9 as follows:

10           (c) It is a defense to prosecution under this section that  
11 the actor reasonably believed that the conduct:

12                   (1) was permitted under Chapter 2001, Occupations  
13 Code;

14                   (2) was permitted under Chapter 2002, Occupations  
15 Code;

16                   (3) consisted entirely of participation in the state  
17 lottery authorized by the State Lottery Act (Chapter 466,  
18 Government Code);

19                   (4) was permitted under the Texas Racing Act (Article  
20 179e, Vernon's Texas Civil Statutes); [~~or~~]

21                   (5) consisted entirely of participation in a drawing  
22 for the opportunity to participate in a hunting, fishing, or other  
23 recreational event conducted by the Parks and Wildlife Department;  
24 or

25                   (6) consisted entirely of operating an eight-liner in  
26 an area in which the operation of eight-liners has been legalized by  
27 a local option election under Chapter 502, Election Code.

1 SECTION 6. Section 47.03(b), Penal Code, is amended to read  
2 as follows:

3 (b) An offense under this section is a Class A misdemeanor,  
4 except that the offense is:

5 (1) a state jail felony if:

6 (A) the offense involves a device described by  
7 Section 47.01(11) other than the monetary prize limits provided by  
8 Sections 47.01(11)(A) and (B); and

9 (B) the prize for a single play of the game is  
10 more than \$1,500 but less than \$20,000;

11 (2) a felony of the third degree if:

12 (A) the offense involves a device described by  
13 Section 47.01(11) other than the monetary prize limits provided by  
14 Sections 47.01(11)(A) and (B); and

15 (B) the prize for a single play of the game is at  
16 least \$20,000 but less than \$100,000; or

17 (3) a felony of the second degree if:

18 (A) the offense involves a device described by  
19 Section 47.01(11) other than the monetary prize limits provided by  
20 Sections 47.01(11)(A) and (B); and

21 (B) the prize for a single play of the game is  
22 \$100,000 or more.

23 SECTION 7. Section 47.04(c), Penal Code, is amended to read  
24 as follows:

25 (c) An offense under this section is a Class A misdemeanor,  
26 except that the offense is:

27 (1) a state jail felony if:

1           (A) the offense involves a device described by  
2 Section 47.01(11) other than the monetary prize limits provided by  
3 Sections 47.01(11)(A) and (B); and

4           (B) the prize for a single play of the game is  
5 more than \$1,500 but less than \$20,000;

6           (2) a felony of the third degree if:

7           (A) the offense involves a device described by  
8 Section 47.01(11) other than the monetary prize limits provided by  
9 Sections 47.01(11)(A) and (B); and

10           (B) the prize for a single play of the game is at  
11 least \$20,000 but less than \$100,000; or

12           (3) a felony of the second degree if:

13           (A) the offense involves a device described by  
14 Section 47.01(11) other than the monetary prize limits provided by  
15 Sections 47.01(11)(A) and (B); and

16           (B) the prize for a single play of the game is  
17 \$100,000 or more.

18           SECTION 8. Section 47.06(e), Penal Code, is amended to read  
19 as follows:

20           (e) An offense under this section is a Class A misdemeanor,  
21 except that the offense is:

22           (1) a state jail felony if:

23           (A) the offense involves a device described by  
24 Section 47.01(11) other than the monetary prize limits provided by  
25 Sections 47.01(11)(A) and (B); and

26           (B) the prize for a single play of the game is  
27 more than \$1,500 but less than \$20,000;

1           (2) a felony of the third degree if:

2                   (A) the offense involves a device described by  
3 Section 47.01(11) other than the monetary prize limits provided by  
4 Sections 47.01(11)(A) and (B); and

5                   (B) the prize for a single play of the game is at  
6 least \$20,000 but less than \$100,000; or

7           (3) a felony of the second degree if:

8                   (A) the offense involves a device described by  
9 Section 47.01(11) other than the monetary prize limits provided by  
10 Sections 47.01(11)(A) and (B); and

11                   (B) the prize for a single play of the game is  
12 \$100,000 or more.

13           SECTION 9. Section 47.09(a), Penal Code, is amended to read  
14 as follows:

15           (a) It is a defense to prosecution under this chapter that  
16 the conduct:

17                   (1) was authorized under:

- 18                           (A) Chapter 2001, Occupations Code;
- 19                           (B) Chapter 2002, Occupations Code; or
- 20                           (C) the Texas Racing Act (Article 179e, Vernon's
- 21 Texas Civil Statutes);

22                   (2) consisted entirely of participation in the state  
23 lottery authorized by Chapter 466, Government Code; [~~or~~]

24                   (3) was a necessary incident to the operation of the  
25 state lottery and was directly or indirectly authorized by:

- 26                           (A) Chapter 466, Government Code;
- 27                           (B) the lottery division of the Texas Lottery

1 Commission;

2 (C) the Texas Lottery Commission; or

3 (D) the director of the lottery division of the  
4 Texas Lottery Commission; or

5 (4) consisted entirely of operating an eight-liner in  
6 an area in which the operation of eight-liners has been legalized by  
7 a local option election under Chapter 502, Election Code.

8 SECTION 10. Chapter 47, Penal Code, is amended by adding  
9 Section 47.091 to read as follows:

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

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

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

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

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

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

23 (1) the noncash merchandise or representation of value  
24 redeemable for noncash merchandise that may be won or awarded for a  
25 single play of a game or use of the device may not have a wholesale  
26 value of more than the lesser of:

27 (A) 10 times the amount charged for the single

1 play or use; or

2 (B) \$5; and

3 (2) an item of noncash merchandise that may be won or  
4 awarded for playing or using the device or for which a person may  
5 redeem one or more tickets, coupons, or other representations of  
6 value won or awarded for playing or using the device may not have a  
7 wholesale value of more than \$50.

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

15 SECTION 11. Section 47.02(e), Penal Code, is repealed.

16 SECTION 12. (a) The change in law made by this Act applies  
17 only to an offense committed on or after the effective date of this  
18 Act. For purposes of this section, an offense is committed before  
19 the effective date of this Act if any element of the offense occurs  
20 before that date.

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

24 SECTION 13. (a) This Act takes effect only if the  
25 constitutional amendment proposed by the 82nd Legislature, Regular  
26 Session, 2011, authorizing local option elections to legalize or  
27 prohibit the operation of eight-liners takes effect. If that



1 amendment is not approved by the voters, this Act has no effect.

2 (b) Subject to Subsection (a) of this section:

3 (1) Sections 1, 2, and 4 through 12 of this Act take  
4 effect on the date on which the constitutional amendment described  
5 by Subsection (a) of this section takes effect; and

6 (2) Section 3 of this Act takes effect January 1, 2012.