

BILL ANALYSIS

C.S.H.B. 1127
By: Smith
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that some amusement redemption machine operators have set up their machines to provide cash prizes in violation of the law. These parties observe that in order to circumvent undercover investigations that generally have allowed law enforcement agencies to shut down such illegal operations, operators have changed their business model by restricting access to allow only members or known referrals. C.S.H.B. 1127 seeks to promote public health, safety, and welfare by providing the commissioners court in a populous county the necessary authority to regulate game rooms.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 1127 amends the Local Government Code to authorize the commissioners court of a county with a population of four million or more, or with a population of less than 25,000 that is adjacent to the Gulf of Mexico and is within 50 miles of an international border, to regulate the operation of game rooms. The bill authorizes the commissioners court to restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county; prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place of religious worship, or residential neighborhood; or restrict the number of game rooms that may operate in a specified area of the county.

C.S.H.B. 1127 authorizes a county to require the owner or operator of a game room to obtain a license or permit or renew a license or permit on a periodic basis to operate a game room in the county. The bill requires an application for a license or permit to be made in accordance with regulations adopted by the county and authorizes such regulations to provide for the denial, suspension, or revocation of a license or permit. The bill establishes that a district court has jurisdiction of a suit that arises from a county's denial, suspension, or revocation of a license or other permit. The bill authorizes the county to impose a fee of up to \$1,000 on an applicant for a license or permit or for the renewal of the license or permit and requires the fee to be based on the cost of processing the application and investigating the applicant.

C.S.H.B. 1127 authorizes a peace officer or county employee to inspect a business in the county to determine how many gambling devices or amusement redemption machines that are subject to regulation are located on the premises of the business and authorizes a peace officer or county employee to inspect any business in which one or more gambling devices or six or more amusement redemption machines are located to determine whether the business is in compliance with the bill's provisions and regulations adopted under the bill's provisions. The bill establishes that a person violates its provisions if one or more gambling devices or six or more amusement redemption machines are located on the premises of the business and the person fails to allow a peace officer or county employee to conduct an inspection.

C.S.H.B. 1127 authorizes the county to sue in district court for an injunction to prohibit the violation or threatened violation of the bill's provisions or a game room regulation adopted by the commissioners court. The bill establishes that a person who violates the bill's provisions or such a regulation is liable to the county for a civil penalty of not more than \$10,000 for each violation and specifies that each day a violation continues is considered a separate violation for purposes of assessing the civil penalty. The bill authorizes the county to bring suit in district court to recover the civil penalty and entitles the county to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, and investigatory costs. The bill makes it a Class A misdemeanor offense to intentionally or knowingly operate a game room in violation of a regulation adopted under the bill's provisions. The bill specifies that a person who is subject to prosecution for such an offense and any other law may be prosecuted under either or both laws.

C.S.H.B. 1127 establishes that authority under the bill's provisions is cumulative of other authority that a county has to regulate game rooms and does not limit that authority. The bill's provisions do not legalize any activity prohibited under the Penal Code or other state law. The bill establishes that a person's compliance with the bill's provisions, including operating a game room under a license or permit issued under the bill's provisions, is not a defense to prosecution for a gambling offense.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1127 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 234, Local Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. GAME ROOMS

Sec. 234.131. DEFINITIONS. In this subchapter:

(1) "Amusement redemption machine" means a recreational machine that provides a user of the machine with an opportunity to receive something of value, other than a right of replay on the machine, based solely or partially on chance and that accumulates credits or the equivalent of credits when the machine:

(A) displays a winning configuration of like symbols randomly selected by the machine;

(B) matches a winning combination of symbols or numbers to symbols or numbers randomly selected by the machine;

(C) displays a winning combination of cards that is valued in a traditional hierarchy

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 234, Local Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. GAME ROOMS

Sec. 234.131. DEFINITIONS. In this subchapter:

(1) "Amusement redemption machine" means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that rewards the player exclusively with noncash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever amount is less.

(2) "Gambling device" means any electronic, electromechanical, or mechanical

for a poker card game; or
(D) displays a winning combination of cards and points assigned in a traditional blackjack card game.

(2) "Game room" means a for-profit business located in a building or place that contains five or more amusement redemption machines.

(3) "Game room owner" means a person who:

(A) has an ownership interest in, or receives the profits from, a game room or an amusement redemption machine located in a game room;

(B) is a partner, director, or officer of a business, company, or corporation that has an ownership interest in a game room or an amusement redemption machine located in a game room;

(C) is a shareholder that holds more than 50 percent of the outstanding shares of a business, company, or corporation that has an ownership interest in a game room or an amusement redemption machine located in a game room;

(D) has been issued by the county clerk an assumed name certificate for a business that owns a game room or an amusement redemption machine located in a game room;

(E) signs a lease for a game room;

(F) opens an account for utilities for a game room;

(G) receives a certificate of occupancy or certificate of compliance for a game room;

(H) pays for advertising for a game room;

or

(I) signs an alarm permit for a game room.

contrivance, other than an amusement redemption machine, that for a consideration affords the player an opportunity to obtain 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, and includes gambling device versions of bingo, keno, blackjack lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits.

(3) "Game room" means a for-profit business located in a building or place that contains a gambling device or six or more amusement redemption machines.

(4) "Game room owner" means a person who:

(A) has an ownership interest in, or receives the profits from, a game room or a gambling device or an amusement redemption machine located in a game room;

(B) is a partner, director, or officer of a business, company, or corporation that has an ownership interest in a game room or in a gambling device or an amusement redemption machine located in a game room;

(C) is a shareholder that holds more than 10 percent of the outstanding shares of a business, company, or corporation that has an ownership interest in a game room or in a gambling device or an amusement redemption machine located in a game room;

(D) has been issued by the county clerk an assumed name certificate for a business that owns a game room or a gambling device or an amusement redemption machine located in a game room;

(E) signs a lease for a game room;

(F) opens an account for utilities for a game room;

(G) receives a certificate of occupancy or certificate of compliance for a game room;

(H) pays for advertising for a game room;

or

(I) signs an alarm permit for a game room.

(4) "Operator" means an individual who:
(A) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;
(B) displays, delivers, or provides to, or takes orders from, a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;
(C) acts as a door attendant to regulate entry of customers or other persons into a game room; or
(D) supervises or manages other persons at a game room in the performance of an activity listed in this subdivision.
Sec. 234.132. APPLICABILITY. This subchapter applies only to a county with a population of four million or more.

Sec. 234.133. AUTHORITY TO REGULATE. To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:
(1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county;
(2) prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place of religious worship, residential neighborhood, or other specified land use the commissioners court finds inconsistent with the operation of a game room; or
(3) restrict the number of game rooms that may operate in a specified area of the county.
Sec. 234.134. LICENSES OR PERMITS.
(a) A county may require that an owner or operator of a game room obtain a license or permit or renew a license or permit on a periodic basis to operate a game room in the county. An application for a license or permit must be made in accordance with regulations adopted by the county.
(b) Regulations adopted under this section may provide for the denial, suspension, or

(5) "Operator" means an individual who:
(A) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;
(B) displays, delivers, or provides to, or takes orders from, a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;
(C) acts as a door attendant to regulate entry of customers or other persons into a game room; or
(D) supervises or manages other persons at a game room in the performance of an activity listed in this subdivision.
Sec. 234.132. APPLICABILITY. This subchapter applies only to a county:
(1) with a population of four million or more; or
(2) with a population of less than 25,000 that is adjacent to the Gulf of Mexico and is within 50 miles of an international border.
Sec. 234.133. AUTHORITY TO REGULATE. To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:
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Sec. 234.134. LICENSES OR PERMITS.
(a) A county may require that an owner or operator of a game room obtain a license or permit or renew a license or permit on a periodic basis to operate a game room in the county. An application for a license or permit must be made in accordance with regulations adopted by the county.
(b) Regulations adopted under this section may provide for the denial, suspension, or

revocation of a license or permit.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a county.

Sec. 234.135. FEES. A county may impose a fee on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant.

Sec. 234.136. INSPECTION.

A county may inspect any business that contains one or more amusement redemption machines to determine whether the business is in compliance with this subchapter or regulations adopted under this subchapter.

Sec. 234.137. INJUNCTION; CIVIL PENALTY. (a) A county may sue in district court for an injunction to prohibit the violation or threatened violation of a regulation adopted under Section 234.133.

(b) A person who violates a regulation adopted under Section 234.133 is liable to the county for a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by this subsection.

(c) The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

revocation of a license or permit.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a county.

Sec. 234.135. FEES. A county may impose a fee not to exceed \$1,000 on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant.

Sec. 234.136. INSPECTION. (a) A peace officer or county employee may inspect a business in the county to determine how many gambling devices or amusement redemption machines that are subject to regulation under this subchapter are located on the premises of the business.

(b) A peace officer or county employee may inspect any business in which one or more gambling devices or six or more amusement redemption machines are located to determine whether the business is in compliance with this subchapter or regulations adopted under this subchapter.

(c) A person violates this subchapter if one or more gambling devices or six or more amusement redemption machines are located on the premises of the business and the person fails to allow a peace officer or county employee to conduct an inspection under this section.

Sec. 234.137. INJUNCTION; CIVIL PENALTY. (a) A county may sue in district court for an injunction to prohibit the violation or threatened violation of this subchapter or a regulation adopted under Section 234.133.

(b) A person who violates this subchapter or a regulation adopted under Section 234.133 is liable to the county for a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by this subsection.

(c) The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Sec. 234.138. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted under Section 234.133.

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

Sec. 234.139. CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county has to regulate game rooms and does not limit that authority.

Sec. 234.140. EFFECT ON OTHER LAWS. (a) This subchapter does not legalize any activity prohibited under the Penal Code or other state law.

(b) A person who is subject to prosecution under Section 234.138 and any other law may be prosecuted under either or both laws.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Sec. 234.138. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted under Section 234.133.

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

Sec. 234.139. CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county has to regulate game rooms and does not limit that authority.

Sec. 234.140. EFFECT ON OTHER LAWS. (a) This subchapter does not legalize any activity prohibited under the Penal Code or other state law.

(b) A person's compliance with this subchapter, including operating a game room under a license or permit issued under this chapter, is not a defense to prosecution for an offense under Chapter 47, Penal Code.

(c) A person who is subject to prosecution under Section 234.138 and any other law may be prosecuted under either or both laws.

SECTION 2. Same as introduced version.