

By: Raymond

H.B. No. 894

A BILL TO BE ENTITLED

AN ACT

relating to local option elections to legalize or prohibit the operation of eight-liners; imposing fees; creating criminal penalties.

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

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

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

SUBCHAPTER A. GENERAL PROVISIONS

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

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 502.051. ELECTION TO BE HELD. On proper petition by the required number of voters of a county or of a justice precinct or municipality in the county, the commissioners court of the county shall order a local option election in that political subdivision to determine whether the operation of eight-liners shall be legalized or prohibited in the political subdivision.

Sec. 502.052. QUALIFICATION FOR POLITICAL SUBDIVISION TO HOLD ELECTION. A political subdivision may not hold a local option election to legalize or prohibit the operation of eight-liners in the political subdivision unless the political subdivision has been in existence for at least 18 months.

Sec. 502.053. APPLICATION FOR PETITION. (a) On written

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

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

14 Sec. 502.054. CONTENTS OF APPLICATION FOR PETITION TO
15 LEGALIZE. (a) An application for a petition requesting an election
16 to legalize the operation of eight-liners must include the heading:
17 "Application for Local Option Election Petition to Legalize the
18 Operation of Eight-Liners."

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

24 Sec. 502.055. CONTENTS OF APPLICATION FOR PETITION TO
25 PROHIBIT. (a) An application for a petition requesting an election
26 to prohibit the operation of eight-liners must include the heading:
27 "Application for Local Option Election Petition to Prohibit the

1 Operation of Eight-Liners."

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

7 Sec. 502.056. PETITION REQUIREMENTS. A petition must
8 include the date the petition is issued by the county clerk and be
9 serially numbered. Each page of the petition must bear the same
10 date and serial number and the actual seal of the county clerk
11 rather than a facsimile of that seal.

12 Sec. 502.057. HEADING AND STATEMENT ON PETITION TO
13 LEGALIZE. (a) Each page of the petition for a local option
14 election to legalize the operation of eight-liners must include the
15 heading: "Petition for Local Option Election to Legalize the
16 Operation of Eight-Liners."

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

22 Sec. 502.058. HEADING AND STATEMENT ON PETITION TO
23 PROHIBIT. (a) Each page of the petition for a local option
24 election to prohibit the operation of eight-liners must include the
25 heading: "Petition for Local Option Election to Prohibit the
26 Operation of Eight-Liners."

27 (b) The petition must contain the following statement of the

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

5 Sec. 502.059. OFFENSE: MISREPRESENTATION OF PETITION. (a)
6 A person commits an offense if the person misrepresents the purpose
7 or effect of a petition issued under this chapter.

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

9 Sec. 502.060. COPIES OF PETITION; RECORDS. (a) The county
10 clerk shall provide the number of copies of the petition required by
11 the applicants provided the number of pages does not exceed one page
12 for every 10 registered voters of the county or of a justice
13 precinct or municipality in the county. Each copy must bear the
14 date, number, and seal on each page as required on the original
15 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. 502.061. VERIFICATION OF PETITION. (a) Except as
19 otherwise provided by Section [277.003](#), Election Code, the voter
20 registrar of the county shall check the names of the signers of
21 petitions and the voting precincts in which the signers reside to
22 determine whether the signers were qualified voters of the county
23 or of a justice precinct or municipality in the county at the time
24 the petition was issued. The registrar shall certify to the
25 commissioners court the number of qualified voters signing the
26 petition.

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

1 (1) the signature is the actual signature of the
2 purported signer;

3 (2) the petition contains in addition to the
4 signature:

5 (A) the signer's printed name;

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

7 (C) if the territory from which signatures must
8 be obtained is situated in more than one county, the county of
9 registration;

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

11 (E) the date of signing; and

12 (3) the petition complies with any other applicable
13 requirements prescribed by law.

14 (c) The use of ditto marks or abbreviations does not
15 invalidate a signature if the required information is reasonably
16 ascertainable.

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

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

24 (f) A signer may withdraw the signer's signature by deleting
25 the signature from the petition or by filing with the voter
26 registrar an affidavit requesting that the signature be withdrawn
27 from the petition. A signer may not withdraw the signature from a

1 petition on or after the date the petition is received by the
2 registrar. A withdrawal affidavit filed by mail is considered to be
3 filed at the time of its receipt by the registrar. The withdrawal
4 of a signature nullifies the signature on the petition and places
5 the signer in the same position as if the signer had not signed the
6 petition.

7 Sec. 502.062. REQUIREMENTS TO ORDER ELECTION. (a) The
8 commissioners court, at its next regular session on or after the
9 30th day after the date the petition is filed, shall order a local
10 option election to be held on the issue set out in a petition that
11 complies with the requirements of Subsection (b).

12 (b) The petition must:

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

15 (2) bear the signatures of a number of qualified
16 voters of the political subdivision equal to at least 35 percent of
17 the registered voters of the subdivision who voted in the most
18 recent gubernatorial election.

19 (c) A voter whose name appears on the list of registered
20 voters with the notation "S," or a similar notation, shall be
21 excluded from the computation of the number of registered voters of
22 a particular territory.

23 Sec. 502.063. RECORD IN MINUTES. The commissioners court
24 shall enter in its minutes the date a petition is presented, the
25 names of the signers, and the action taken with respect to the
26 petition.

27 Sec. 502.064. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)

1 The election order must state in its heading and text whether the
2 local option election to be held is for the purpose of legalizing or
3 prohibiting the operation of eight-liners as set out in the issue
4 recited in the application and petition.

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

7 Sec. 502.065. BALLOT. The ballot in an election to legalize
8 or prohibit the operation of eight-liners shall be prepared to
9 permit voting for or against: "The legal operation of eight-liners
10 in (name of political subdivision)."

11 Sec. 502.066. EVIDENCE OF VALIDITY. The commissioners
12 court election order is prima facie evidence of compliance with all
13 provisions necessary to give the order validity or to give the
14 commissioners court jurisdiction to make the order valid.

15 Sec. 502.067. FREQUENCY OF ELECTIONS. A local option
16 election on a particular issue may not be held in a political
17 subdivision until after the first anniversary of the date of the
18 most recent local option election in that political subdivision on
19 that issue.

20 SUBCHAPTER C. HOLDING OF ELECTION

21 Sec. 502.101. APPLICABILITY OF ELECTION CODE. Except as
22 provided by this chapter, the officers holding a local option
23 election shall hold the election in the manner provided by this
24 code.

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

1 (b) Election precincts established by the governing body of
2 the municipality for its municipal elections shall be used for a
3 local option election to be held in a municipality. If the
4 governing body has not established precincts for its municipal
5 elections, the commissioners court shall prescribe the election
6 precincts for the local option election under the law governing
7 establishment of precincts for municipal elections.

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

12 (b) The ballot must include the language required under
13 Section 502.065.

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

18 (1) if an election is to be held only within the
19 corporate limits of a municipality located wholly within the
20 county, the county may require the municipality to reimburse the
21 county for all or part of the expenses of holding the local option
22 election;

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

27 (3) county payment of the expense of an election to

prohibit the operation of eight-liners is limited to the holding of one election in a political subdivision during a one-year period.

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

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

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

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

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

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

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

(3) both the fine and confinement.

Sec. 502.106. ELECTION IN CERTAIN MUNICIPALITIES. (a) This section applies only to an election to legalize or prohibit the operation of eight-liners in a municipality that is located in more than one county.

1 (b) An election to which this section applies shall be
2 conducted by the municipality instead of the counties. For the
3 purposes of an election conducted under this section, a reference
4 in this chapter to:

5 (1) the county is considered to refer to the
6 municipality;

7 (2) the commissioners court is considered to refer to
8 the governing body of the municipality;

9 (3) the county clerk or voter registrar is considered
10 to refer to the secretary of the municipality or, if the
11 municipality does not have a secretary, to the person performing
12 the functions of a secretary of the municipality; and

13 (4) the county judge is considered to refer to the
14 mayor of the municipality or, if the municipality does not have a
15 mayor, to the presiding officer of the governing body of the
16 municipality.

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

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

21 SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

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

26 (b) In a legalization election, if a majority of the votes
27 cast favor legalizing the operation of eight-liners in the

1 political subdivision, the operation of eight-liners within the
2 boundaries of the political subdivision is legal on the entering of
3 the court's order. The legalization remains in effect until
4 changed by a subsequent local option election held under this
5 chapter.

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

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

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

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

20 Sec. 502.152. ORDER PRIMA FACIE EVIDENCE. The order of the
21 commissioners court declaring an election result is prima facie
22 evidence that all provisions of law have been complied with in
23 giving notice of and holding the election, counting and returning
24 the votes, and declaring the result of the election.

25 Sec. 502.153. CERTIFICATION OF RESULT. Not later than the
26 third day after the date the result of a local option election has
27 been declared, the county clerk shall certify the result to the

1 secretary of state. The clerk may not charge a fee for this
2 service.

3 Sec. 502.154. POSTING ORDER PROHIBITING OPERATION. (a) A
4 commissioners court order declaring the result of a local option
5 election and prohibiting the operation of eight-liners within the
6 boundaries of a political subdivision must be published by posting
7 the order at three public places in the political subdivision in
8 which the election was held.

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

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

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

20 (c) If an election contest is not timely instituted, it is
21 conclusively presumed that the election is valid and binding in all
22 respects on all courts.

23 SUBCHAPTER E. MISCELLANEOUS LOCAL OPTION PROVISIONS

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

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

5 Sec. 502.202. CHANGE OF STATUS. Except as provided in
6 Section 502.203, an authorized voting unit that has exercised or
7 may exercise the right of local option retains the status adopted
8 until that status is changed by a subsequent local option election
9 in the same authorized voting unit.

10 Sec. 502.203. PREVAILING STATUS: RESOLUTION OF CONFLICTS.
11 To ensure that each voter has the maximum possible control over the
12 status of the operation of eight-liners in the area where the voter
13 resides:

14 (1) the status that resulted from or is the result of a
15 duly called election for a municipality prevails against the status
16 that resulted from or is the result of an election in a justice
17 precinct or county in which the municipality or any part of the
18 municipality is contained; and

19 (2) the status that resulted from or is the result of
20 an election for a justice precinct prevails against the status that
21 resulted from or is the result of an election in a municipality in
22 which the justice precinct is wholly contained or in a county in
23 which the justice precinct is located.

24 Sec. 502.204. CHANGE IN PRECINCT BOUNDARIES. (a) When a
25 local option status is in effect as the result of the vote in a
26 justice precinct, the status shall remain in effect until the
27 status is changed as the result of a vote in the same territory that

1 constituted the precinct when the status was established. If the
2 boundaries of the justice precinct have changed since the status
3 was established, the commissioners court shall, for purposes of a
4 local option election, define the boundaries of the original
5 precinct. A local option election may be held within the territory
6 defined by the commissioners court as constituting the original
7 precinct.

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

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

13 SECTION 2. Section 2153.002, Occupations Code, is amended
14 by amending Subdivisions (1), (5), and (6) and adding Subdivision
15 (2-a) to read as follows:

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

21 (2-a) "Eight-liner" has the meaning assigned by
22 Section 47.01, Penal Code.

23 (5) "Operator" means a person who exhibits or
24 displays, or permits to be exhibited or displayed, a coin-operated
25 machine or an eight-liner in this state in a place of business that
26 is not owned by the person.

27 (6) "Owner" means a person who owns a coin-operated

1 machine or an eight-liner in this state.

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

4 SUBCHAPTER K. FEE ON EIGHT-LINERS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. Section 234.131(1), Local Government Code, is amended to read as follows:

(1) "Amusement redemption machine" means a bona fide amusement device as defined by Section 47.01, Penal Code, operated in a manner that constitutes an affirmative defense under Section 47.091, Penal Code ~~[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, with a wholesale value available from a single play of the game or device in an amount not more than 10 times the amount charged to play the game or device once or \$5, whichever amount is less]~~.

SECTION 5. Section 47.01, Penal Code, is amended by amending Subdivisions (4) and (9) and adding Subdivisions (10), (11), and (12) 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,

1 roulette, video poker, or similar electronic, electromechanical,
2 or mechanical games, or a facsimile of any of those games
3 ~~[facsimiles thereof]~~, that:

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

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

9 (C) records ~~[that record]~~ the number of free
10 games or credits ~~[so]~~ awarded and the cancellation or removal of the
11 free games or credits~~[, and~~

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

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

25 (10) "Device" includes all or part of an electronic,
26 electromechanical, or mechanical contrivance, machine, or
27 apparatus.

1 (11) "Eight-liner" means an electronic device capable
2 of simulating the play of a traditional mechanical slot machine, or
3 one-armed bandit, regardless of the number of lines of play on the
4 device, that for the payment of consideration affords a player of a
5 game on the device an opportunity to win a prize based solely or
6 partially on chance, if the prize from a single play of the game
7 consists of:

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

9 (B) noncash merchandise, or a representation of
10 value redeemable for noncash merchandise, that has a wholesale
11 value of \$1,500 or less.

12 (12) "Bona fide amusement device" means a device on
13 which an amusement game or other activity can be played or conducted
14 for consideration, for which skill is the predominating requirement
15 for a player of the game to win or be awarded a thing of value. The
16 term does not include:

17 (A) an eight-liner; or

18 (B) an electronic, electromechanical, or
19 mechanical version of bingo, keno, blackjack, lottery, roulette,
20 video poker, or a similar game, or a facsimile of any of those
21 games, that operates solely or partially by chance.

22 SECTION 6. Section 47.02(c), Penal Code, is amended to read
23 as follows:

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

26 (1) was permitted under Chapter 2001, Occupations
27 Code;

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

(3) was permitted under Chapter 2004, Occupations Code;

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

(5) was permitted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); ~~or~~

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

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

SECTION 7. Section 47.03(b), Penal Code, is amended to read as follows:

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

(1) a state jail felony if:

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

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

(2) a felony of the third degree 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 at
5 least \$20,000 but less than \$100,000; or

6 (3) a felony of the second 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
11 \$100,000 or more.

12 SECTION 8. Section 47.04(c), Penal Code, is amended to read
13 as follows:

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

16 (1) a state jail felony if:

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

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

22 (2) a felony of the third degree 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 at
27 least \$20,000 but less than \$100,000; or

1 (3) a felony of the second 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
6 \$100,000 or more.

7 SECTION 9. Section 47.06(e), Penal Code, is amended to read
8 as follows:

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

11 (1) a state jail felony 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
16 more than \$1,500 but less than \$20,000;

17 (2) a felony of the third 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 at
22 least \$20,000 but less than \$100,000; or

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

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

27 (B) the prize for a single play of the game is

1 \$100,000 or more.

2 SECTION 10. Section 47.09(a), Penal Code, is amended to
3 read as follows:

4 (a) It is a defense to prosecution under this chapter that
5 the conduct:

6 (1) was authorized under:

7 (A) Chapter 2001, Occupations Code;

8 (B) Chapter 2002, Occupations Code;

9 (C) Chapter 2004, Occupations Code; or

10 (D) the Texas Racing Act (Article 179e, Vernon's
11 Texas Civil Statutes);

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

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

16 (A) Chapter 466, Government Code;

17 (B) the lottery division of the Texas Lottery
18 Commission;

19 (C) the Texas Lottery Commission; or

20 (D) the director of the lottery division of the
21 Texas Lottery Commission; or

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

25 SECTION 11. Chapter 47, Penal Code, is amended by adding
26 Section 47.091 to read as follows:

27 Sec. 47.091. DEFENSES FOR BONA FIDE AMUSEMENT DEVICE. (a)

1 It is an affirmative defense to prosecution under Section 47.02
2 that:

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

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

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

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

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

13 (1) the noncash merchandise or representation of value
14 redeemable for noncash merchandise that may be won or awarded for a
15 single play of a game or use of the device may not have a wholesale
16 value of more than the lesser of:

17 (A) 10 times the amount charged for the single
18 play or use; or

19 (B) \$5; and

20 (2) an item of noncash merchandise that may be won or
21 awarded for playing or using the device or for which a person may
22 redeem one or more tickets, coupons, or other representations of
23 value won or awarded for playing or using the device may not have a
24 wholesale value of more than \$50.

25 (c) It is an affirmative defense to prosecution under
26 Section 47.03, 47.04, or 47.06 that the conduct consists of or is a
27 necessary incident to offering, using, or maintaining one or more

1 bona fide amusement devices used exclusively for conduct for which
2 Subsection (a) provides an affirmative defense to a person playing
3 or using the device, including the manufacturing, transporting,
4 storing, or repairing of the device.

5 SECTION 12. Section 47.02(e), Penal Code, is repealed.

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

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

14 SECTION 14. (a) This Act takes effect only if the
15 constitutional amendment proposed by the 85th Legislature, Regular
16 Session, 2017, authorizing local option elections to legalize or
17 prohibit the operation of eight-liners takes effect. If that
18 amendment is not approved by the voters, this Act has no effect.

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

20 (1) Sections 1, 2, and 4 through 13 of this Act take
21 effect on the date on which the constitutional amendment described
22 by Subsection (a) of this section takes effect; and

23 (2) Section 3 of this Act takes effect January 1, 2018.