

By: Raymond

H.B. No. 78

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 offenses; increasing 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 BY PETITION. 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 legalize or prohibit the operation of eight-liners in the political subdivision.

Sec. 502.052. QUALIFICATION FOR POLITICAL SUBDIVISION TO HOLD ELECTION. A political subdivision must have been in existence for at least 18 months before a local option election to legalize or prohibit the operation of eight-liners in the political subdivision may be held.

Sec. 502.053. APPLICATION FOR PETITION. (a) If 10 or more

1 qualified voters of any county, justice precinct, or municipality
2 file a written application and provide proof of publication of
3 notice in a newspaper of general circulation in that political
4 subdivision, the county clerk of the county shall issue to the
5 applicants a petition to be circulated among and signed by the
6 qualified voters of the political subdivision requesting that a
7 local option election be called to determine whether to legalize or
8 prohibit the operation of eight-liners in the political
9 subdivision.

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

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

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

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

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

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

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

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

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

26 (b) The petition must contain the following statement of the
27 issue to be voted on, immediately preceding the signatures of the

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

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

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

8 Sec. 502.060. COPIES OF PETITION; RECORDS. (a) The county
9 clerk shall provide the number of copies of the petition required by
10 the applicants provided that number does not exceed one page for
11 every 10 registered voters of the county or of a justice precinct or
12 municipality in the county. Each copy must bear the date, number,
13 and seal on each page as required on the original petition.

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

16 Sec. 502.061. VERIFICATION OF PETITION. (a) Except as
17 otherwise provided by Section 277.003, the voter registrar of the
18 county shall check the names of the signers of petitions and the
19 voting precincts in which the signers reside to determine whether
20 the signers were qualified voters of the county, justice precinct,
21 or municipality at the time the petition was issued. The registrar
22 shall certify to the commissioners court the number of qualified
23 voters signing the petition.

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

25 (1) the signature is the actual signature of the
26 purported signer;

27 (2) the petition contains in addition to the

1 signature:

2 (A) the signer's printed name;

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

4 (C) if the territory from which signatures must
5 be obtained is situated in more than one county, the county of
6 registration;

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

8 (E) the date of signing; and

9 (3) the petition complies with any other applicable
10 requirements prescribed by law.

11 (c) The use of ditto marks or abbreviations does not
12 invalidate a signature if the required information is reasonably
13 ascertainable.

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

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

21 (f) A signer may withdraw the signer's signature by deleting
22 the signature from the petition or by filing with the voter
23 registrar an affidavit requesting that the signature be withdrawn
24 from the petition. A signer may not withdraw the signature from a
25 petition on or after the date the petition is received by the
26 registrar. A withdrawal affidavit filed by mail is considered to be
27 filed at the time of its receipt by the registrar. The withdrawal

1 of a signature nullifies the signature on the petition and places
2 the signer in the same position as if the signer had not signed the
3 petition.

4 Sec. 502.062. REQUIREMENTS TO ORDER ELECTION. (a) The
5 commissioners court, at its next regular session on or after the
6 30th day after the date a petition is filed, shall order a local
7 option election to be held on the issue set out in the petition that
8 complies with the requirements of Subsection (b).

9 (b) The petition must:

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

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

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

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

24 Sec. 502.064. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a)
25 The election order must state in its heading and text whether the
26 local option election to be held is for the purpose of legalizing or
27 prohibiting the operation of eight-liners as set out in the issue

1 recited in the application and petition.

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

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

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

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

17 SUBCHAPTER C. HOLDING OF ELECTION

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

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

25 (b) Election precincts established by the governing body of
26 the municipality for its municipal elections shall be used for a
27 local option election to be held in a municipality. If the

1 governing body has not established precincts for its municipal
2 elections, the commissioners court of the county in which the
3 municipality is located shall prescribe the election precincts for
4 the local option election under the law governing establishment of
5 precincts for municipal elections.

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

10 (b) The ballot must include the language required by Section
11 502.065.

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

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

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

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

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

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

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

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

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

- 18 (1) a fine of not less than \$200 nor more than \$500;
19 (2) confinement in the county jail for not more than 30
20 days; or
21 (3) both the fine and confinement.

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

26 (b) An election to which this section applies shall be
27 conducted by the municipality instead of the counties. For the

1 purposes of an election conducted under this section, a reference
2 in this chapter to:

3 (1) the county is considered to refer to the
4 municipality;

5 (2) the commissioners court is considered to refer to
6 the governing body of the municipality;

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

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

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

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

19 SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

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

24 (b) In a legalization election, if a majority of the votes
25 cast favor legalizing the operation of eight-liners in the
26 political subdivision, the operation of eight-liners within the
27 boundaries of the political subdivision is legal on the entering of

1 the court's order. The legalization remains in effect until
2 changed by a subsequent local option election held under this
3 chapter.

4 (c) In a prohibitory election, if a majority of the votes
5 cast favor prohibiting the legal operation of eight-liners in the
6 political subdivision, the court's order must state that the
7 operation of eight-liners within the boundaries of the political
8 subdivision is prohibited effective on the 30th day after the date
9 the order is entered. The prohibition remains in effect until
10 changed by a subsequent local option election held under this
11 chapter.

12 (d) The local option status of a political subdivision does
13 not change as a result of the election if less than a majority of the
14 votes cast favor the issue.

15 Sec. 502.152. ORDER PRIMA FACIE EVIDENCE. The order of the
16 commissioners court declaring an election result is prima facie
17 evidence that all provisions of law have been complied with in
18 giving notice of and holding the election, counting and returning
19 the votes, and declaring the result of the election.

20 Sec. 502.153. CERTIFICATION OF RESULT. Not later than the
21 third day after the date the result of a local option election has
22 been declared, the county clerk shall certify the result to the
23 secretary of state. The clerk may not charge a fee for this
24 service.

25 Sec. 502.154. POSTING ORDER PROHIBITING OPERATION. (a) A
26 commissioners court order declaring the result of a local option
27 election and prohibiting the operation of eight-liners within the

1 boundaries of a political subdivision must be published by posting
2 the order at three public places in the political subdivision in
3 which the election was held.

4 (b) The county judge shall record the posting of the order
5 in the minutes of the commissioners court. The entry in the minutes
6 or a copy certified under the hand and seal of the county clerk is
7 prima facie evidence of the posting.

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

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

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

18 SUBCHAPTER E. MISCELLANEOUS LOCAL OPTION PROVISIONS

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

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

27 Sec. 502.202. CHANGE OF STATUS. Except as provided in

1 Section 502.203, a political subdivision that has exercised or may
2 exercise the right of local option to legalize or prohibit the
3 operation of eight-liners retains the status adopted until that
4 status is changed by a subsequent local option election in the same
5 political subdivision.

6 Sec. 502.203. PREVAILING STATUS: RESOLUTION OF CONFLICTS.
7 To ensure that each voter has the maximum possible control over the
8 status of the operation of eight-liners in the area where the voter
9 resides:

10 (1) the status that resulted from or is the result of a
11 duly called election for a municipality prevails against the status
12 that resulted from or is the result of an election in the county in
13 which the municipality or any part of the municipality is located;
14 and

15 (2) the status that resulted from or is the result of
16 an election for a justice precinct prevails against the status that
17 resulted from or is the result of an election in a municipality in
18 which the justice precinct is wholly contained or in a county in
19 which the justice precinct is located.

20 Sec. 502.204. CHANGE IN PRECINCT BOUNDARIES. (a) When a
21 local option status is in effect as the result of the vote in a
22 justice precinct, the status shall remain in effect until the
23 status is changed as the result of a vote in the same territory that
24 constituted the precinct when the status was established. If the
25 boundaries of the justice precinct have changed since the status
26 was established, the commissioners court shall, for purposes of a
27 local option election, define the boundaries of the original

1 precinct. A local option election may be held within the territory
2 defined by the commissioners court as constituting the original
3 precinct.

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

6 (c) Section 502.104, relating to the payment of local option
7 election expenses, applies to elections held in a territory that is
8 defined in accordance with Subsection (a) of this section.

9 SECTION 2. Section 2153.002, Occupations Code, is amended
10 by amending Subdivisions (1), (5), and (6) and adding Subdivision
11 (2-a) to read as follows:

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

17 (2-a) "Eight-liner" has the meaning assigned by
18 Section 47.01, Penal Code.

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

23 (6) "Owner" means a person who owns a coin-operated
24 machine or an eight-liner in this state.

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

1 SUBCHAPTER K. FEE ON EIGHT-LINERS

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

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

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

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

15 Sec. 2153.504. COLLECTION. (a) The comptroller shall
16 collect the fee.

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

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

19 (2) establish procedures for quarterly collection of
20 the fee; and

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

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

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

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

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

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

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

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

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

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

23 Sec. 2153.508. APPLICABILITY OF TAX CODE. Subtitle B, Title
24 2, Tax Code, applies to the administration, collection, and
25 enforcement of taxes, penalties, and interest under this
26 subchapter.

27 SECTION 4. Section [234.131\(1\)](#), Local Government Code, is

1 amended to read as follows:

2 (1) "Amusement redemption machine" means a bona fide
3 amusement device as defined by Section 47.01, Penal Code, operated
4 in a manner that constitutes an affirmative defense under Section
5 47.091, Penal Code [~~any electronic, electromechanical, or~~
6 ~~mechanical contrivance designed, made, and adopted for bona fide~~
7 ~~amusement purposes that rewards the player exclusively with noncash~~
8 ~~merchandise, prizes, toys, or novelties, or a representation of~~
9 ~~value redeemable for those items, with a wholesale value available~~
10 ~~from a single play of the game or device in an amount not more than~~
11 ~~10 times the amount charged to play the game or device once or \$5,~~
12 ~~whichever amount is less].~~

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

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

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

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

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

6 (C) records ~~[that record]~~ the number of free
7 games or credits ~~[so]~~ awarded and the cancellation or removal of the
8 free games or credits ~~[, and~~

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

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

22 (10) "Device" includes all or part of an electronic,
23 electromechanical, or mechanical contrivance, machine, or
24 apparatus.

25 (11) "Eight-liner" means an electronic device capable
26 of simulating the play of a traditional mechanical slot machine, or
27 one-armed bandit, regardless of the number of lines of play on the

1 device, that for the payment of consideration affords a player of a
2 game on the device an opportunity to win a prize based solely or
3 partially on chance, if the prize from a single play of the game
4 consists of:

- 5 (A) cash in an amount of \$1,500 or less; or
6 (B) noncash merchandise, or a representation of
7 value redeemable for noncash merchandise, that has a wholesale
8 value of \$1,500 or less.

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

- 14 (A) an eight-liner; or
15 (B) an electronic, electromechanical, or
16 mechanical version of bingo, keno, blackjack, lottery, roulette,
17 video poker, or a similar game, or a facsimile of any of those
18 games, that operates solely or partially by chance.

19 SECTION 6. Section 47.02(c), Penal Code, as effective April
20 1, 2019, is amended to read as follows:

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

23 (1) was permitted under Chapter 2001, Occupations
24 Code;

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

27 (3) was permitted under Chapter 2004, Occupations

1 Code;

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

5 (5) was permitted under Subtitle A-1, Title 13,
6 Occupations Code (Texas Racing Act); [~~or~~]

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

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

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

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

18 (1) a state jail felony if:

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

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

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

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

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

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

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

7 (B) the prize for a single play of the game is
8 \$100,000 or more.

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

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

13 (1) a state jail felony if:

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

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

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

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

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

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

26 (A) the offense involves a device described by
27 Section 47.01(11) other than the monetary prize limits provided by

1 Sections 47.01(11)(A) and (B); and
2 (B) the prize for a single play of the game is
3 \$100,000 or more.

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

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

8 (1) a state jail felony if:

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

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

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

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

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

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

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

24 (B) the prize for a single play of the game is
25 \$100,000 or more.

26 SECTION 10. Section 47.09(a), Penal Code, as effective
27 April 1, 2019, is amended to read as follows:

1 (a) It is a defense to prosecution under this chapter that
2 the conduct:

3 (1) was authorized under:

4 (A) Chapter 2001, Occupations Code;

5 (B) Chapter 2002, Occupations Code;

6 (C) Chapter 2004, Occupations Code;

7 (D) Subtitle A-1, Title 13, Occupations Code
8 (Texas Racing Act); or

9 (E) Chapter 280, Finance Code;

10 (2) consisted entirely of participation in the state
11 lottery authorized by Chapter 466, Government Code; ~~or~~

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

14 (A) Chapter 466, Government Code;

15 (B) the lottery division of the Texas Lottery
16 Commission;

17 (C) the Texas Lottery Commission; or

18 (D) the director of the lottery division of the
19 Texas Lottery Commission; or

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

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

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

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

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

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

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

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

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

15 (A) 10 times the amount charged for the single
16 play or use; or

17 (B) \$5; and

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

23 (c) It is an affirmative defense to prosecution under
24 Section 47.03, 47.04, or 47.06 that the conduct consists of or is a
25 necessary incident to offering, using, or maintaining one or more
26 bona fide amusement devices used exclusively for conduct for which
27 Subsection (a) provides an affirmative defense to a person playing

1 or using the device, including the manufacturing, transporting,
2 storing, or repairing of the device.

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

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

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

12 SECTION 14. (a) This Act takes effect only if the
13 constitutional amendment proposed by the 86th Legislature, Regular
14 Session, 2019, authorizing local option elections to legalize or
15 prohibit the operation of eight-liners takes effect. If that
16 amendment is not approved by the voters, this Act has no effect.

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

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

21 (2) Section 3 of this Act takes effect January 1, 2020.