

PUBLIC COMMENTS

HB 770

HOUSE COMMITTEE ON LICENSING & ADMINISTRATIVE PROCEDURES

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Hearing Date: March 17, 2021 10:30 AM - or upon final adjourn./recess or bill referral if permission granted

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Rodger Weems, Chairman v(Volunteer)

Self and Texans Against Gambling

Grand Prairie, TX

Even if passed, HB770 is not lawfully binding. Expansion of gambling (which this bill certainly is) cannot be accomplished without a constitutional amendment or referendum and supermajority vote of the Legislature. Poker houses are entitled to none of the exceptions provided in law nor the "friendly poker" exception. Poker without question involves an element of chance. It is not completely skills based; therefore commercial poker is outlawed by the Texas Constitution. The house either takes a "rake" (cut) or memberships and so violate the provision that no one may take any money except for the winnings of the players. Without the profit motive, commercial poker would not and could not exist. Do not be fooled.

Russell Coleman

Self

Dallas, TX

Please oppose this bill. Although the bill does not purport to legalize activity prohibited under the Texas Penal Code (see the bill's proposed § 234.170), the bill would undermine and introduce uncertainty into the prosecution of illegal commercial poker houses. As a result the bill would allow illegal commercial gambling--and resulting well-known civic, social, and economic harms--to take hold and grow in Texas' largest county.

As the L&AP committee knows, gambling is prohibited in Texas with few exceptions. See Texas Const. art. III, § 47; Texas Penal Code § 47; see also *Hardy v. State*, 102 S.W.3d 123, 130 (Tex. 2003). Exceptions exist for charitable raffles, the Texas lottery, horse racing, and greyhound racing, which are legal only under specific limited circumstances.

Texas Penal Code § 47 prohibits commercial gambling but provides a defense for limited social gambling under certain conditions. Section 47.02 proscribes gambling by making bets; section 47.04 proscribes keeping a gambling place. See Tex. Pen. Code § 47; *State v. Taylor*, 805 S.W.2d 440, 442 (Tex. Crim. App. 1991). Section 47.04(b) provides a limited affirmative defense to protect an owner of a place where gambling occurs when "(1) the gambling occurred in a private place; (2) no person received any economic benefit other than personal winnings; and (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants." Section 47.02(b) establishes a similar defense to prosecution of gamblers.

The plain purpose of Sections 47.02(b) and 47.04(b) is to distinguish illegal commercial gambling from non-commercial, private, limited social gambling, if the latter meets all elements of the statutory defense. The plain language of Sections 47.02(b)(2) and 47.04(b)(2) does not in any way limit "economic benefit" to be - or be derived from - a percentage of the value gambled. (Footnote 1.) The Texas Penal Code defines "benefit" broadly: "anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested"; Tex. Pen. Code § 1.07(a)(7). That the owner or operator of a gambling establishment receives a benefit - an economic gain - from a gambler's membership or entrance fee is indisputable, as is that the gain has no relation to the owner or operator's personal winnings. The benefit marks a commercial gambling establishment that violates the Texas Penal Code.

Fn1: Please note the Legislature's use of the word "person" in Sections 47.02(b)(2) and 47.04(b)(2) rather than the word "participants" in Sections 47.04(b)(3) and 47.04(b)(3). The intentional distinction establishes that receipt of an "economic benefit" other than personal winnings by a gambling establishment owner or operator - whether or not a gambling "participant" - precludes availability of the Section 47.02(b) or 47.04(b) defense.

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Thank you.