

## **BILL ANALYSIS**

C.S.H.B. 2843  
By: Kuempel  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

By authorizing destination resorts that include hotel accommodations, meeting space, entertainment facilities, shopping centers, restaurants, casino gaming and sports wagering, and a combination of various other tourism amenities and facilities, the State of Texas would be better equipped to compete with other states in attracting some of the largest conventions and millions of leisure travelers a year. According to testimony by Dr. George Zodrow, these destination resorts could create 48 thousand full-time equivalent jobs, labor income of \$4.5 billion, an increase in value added or GDP of \$8.3 billion, and initial construction expenditures with 25 thousand jobs per year. C.S.H.B. 2843 seeks to provide for the implementation of casino gaming and sports wagering at destination resorts in Texas, contingent on the passage of a corresponding constitutional amendment. The bill establishes the detailed regulatory regime necessary for implementation, including provisions relating to the structure, powers, and duties of a new Texas Gaming Commission, the process for licensing casinos at destination resorts, and the conduct of casino gaming and sports wagering in Texas.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Gaming Commission and the Texas Racing Commission in SECTION 1 of this bill.

### **ANALYSIS**

#### **Authorization and Regulation of Casino Gaming and Sports Wagering**

C.S.H.B. 2843 amends the Occupations Code by adding a new subtitle (Subtitle E) to Title 13 of that Code to set out provisions authorizing and regulating casino gaming and sports wagering in Texas, including by establishing a licensing scheme for casinos and casino-related occupations and businesses and establishing the Texas Gaming Commission, a new state agency tasked with industry regulation and oversight.

Accordingly, C.S.H.B. 2843 declares it to be the public policy of the state that:

- the development of regulated casino gaming and sports wagering at a limited number of destination resorts in Texas will benefit the general welfare of Texans by enhancing investment, economic development, and tourism, resulting in thousands of new jobs and significant additional revenue to the state for essential services;

- the conduct of regulated casino gaming or sports wagering by adults at a limited number of destination resorts and on Indian lands will not harm the welfare of the state;
- the regulation of casino gaming and sports wagering in Texas is important to ensure that casino gaming and sports wagering is conducted honestly and competitively and free from criminal and corruptive elements;
- public confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the conduct of casino gaming, the casino service industry, and the conduct of sports wagering;
- persons owning any direct or indirect material interest in a casino should be licensed and controlled to protect the public health, safety, morals, good order, and general welfare of Texans;
- certain operators and employees of casinos and certain persons engaging in the casino service industry should be regulated, licensed, and controlled to accomplish and promote these public policies while protecting the public health, safety, morals, good order, and general welfare of Texans; and
- it is the intent of the legislature that the resources, goods, labor, and services of Texans be used, where possible, in the operation and construction of destination resorts, casinos, and related amenities to the extent allowable by law.

The bill requires all casino gaming and sports wagering that is conducted in Texas and authorized by law to be regulated and licensed under the applicable provisions of the bill, unless federal law or another state law specifically provides otherwise.

For these purposes, "casino gaming," "casino game," or "gambling game" means any game or similar activity that involves placing a bet, as defined by reference to Penal Code provisions regarding gambling offenses (Section 47.01, Penal Code), for consideration. The terms include the following when played for consideration using money, property, checks, credit, or a representative of value:

- a banking game, percentage game, or game of chance played with cards, dice, or a mechanical, electromechanical, electronic, or other device; and
- a game or device approved by the gaming commission as a casino game.

The terms do not include any of the following:

- placing, receiving, or otherwise knowingly transmitting a bet by a means that requires the use of the Internet, except in connection with the play of games or devices that are offered by a casino license holder and that are played on-site at a casino;
- playing any mechanical, electromechanical, electronic, or other device designed, made, and adapted solely for bona fide amusement purposes if the device 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 is less;
- bingo authorized under Chapter 2001, Occupations Code (the Bingo Enabling Act);
- charitable raffles authorized under Chapter 2002, Occupations Code (the Charitable Raffle Enabling Act);
- the state lottery conducted under Chapter 466, Government Code (the State Lottery Act);
- sports wagering; or
- the placing of a bet:
  - that occurs in a private place, as defined by reference to Penal Code provisions regarding gambling offenses (Section 47.01, Penal Code);
  - in connection with which no person receives any economic benefit other than personal winnings; and
  - that, except for the advantage of skill or luck, involves risks of losing and chances of winning that are the same for all participants.

## Texas Gaming Commission

### *Gaming Commission*

C.S.H.B. 2843 provides for the composition of the five-member Texas Gaming Commission, whose members are appointed by the governor with the advice and consent of the senate. The bill sets out qualifications of a person to be eligible for appointment to the commission, as follows:

- must be a citizen of the U.S.;
- must submit a financial statement that contains the information required by Chapter 572, Government Code (the chapter titled "Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest");
- may not have a pecuniary interest in an entity engaged in the conduct of casino gaming or sports wagering or the provision of casino services that require a casino service license, including having any security issued by that entity, or be related within the second degree by affinity or the third degree by consanguinity (as determined under Chapter 573, Government Code) to an individual who has a such a pecuniary interest or holds such a security;
- may not be an applicant for or holder of a license under a law administered by the commission or hold an equity interest in a casino license holder requiring qualification under provisions added by the bill;
- may not be a member of the governing body of a political subdivision of this state; and
- may not hold an elective office or be an officer or official of a political party.

Before assuming membership on the commission, a person must affirm that the person meets the qualification, including that the person does not have a pecuniary interest in any business or entity, and is not conducting business with any business or entity, that holds a license for involvement in casino gaming or sports wagering. Appointments must be made without regard to race, color, disability, sex, religion, age, or national origin. The bill requires the initial members to be appointed not later than February 1, 2024, and provides for the initial staggering of terms (with the governor designating one member to a term expiring February 1, 2025, two members to terms expiring February 1, 2027, and two members to terms expiring February 1, 2029).

C.S.H.B. 2843 provides for the administration and operation of the gaming commission, including with respect to the following topics.

C.S.H.B. 2843 provides conflict of interest restrictions on who may be a gaming commission member or certain capacity of employee based on certain industry lobbying ties. More specifically, the bill provides that a person may not be a commission member or an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 if:

- the person is an officer, employee, manager, or paid consultant of a Texas trade association in the field of gaming; or
- the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of gaming.

The bill defines the term "Texas trade association" for these provisions as a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The bill also provides that a person may not be a commission member or act as general counsel to the commission if the person is required to register as a lobbyist because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

C.S.H.B. 2843 provides for member terms and the manner in which a vacancy is filled. More specifically, the bill provides that commission members serve staggered six-year terms, with the term or terms of one or two members expiring February 1 of each odd-numbered year. The bill further provides that the governor shall fill a vacancy in a position on the commission for the remainder of the unexpired term.

C.S.H.B. 2843 provides that the governor must designate a commission member as presiding officer of the commission to serve in that capacity at the pleasure of the governor.

C.S.H.B. 2843 provides for commission meetings and the keeping of official meeting records. More specifically, the bill provides that the commission must meet not fewer than 12 times each year, may meet at other times at the call of the presiding officer or as provided by commission rule, and must keep an official record of all commission meetings and proceedings.

C.S.H.B. 2843 provides grounds for removal of a gaming commission member and notification of relevant officials if a potential ground for removal exists. More specifically, the bill provides that it is a ground for removal from the commission that a member:

- does not have at the time of taking office the qualifications required to be eligible for appointment to the commission;
- does not maintain during service on the commission those qualifications;
- is ineligible for membership under the provisions that prohibit a person from being a commission member if the person or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of gaming or if the person is required to register as a lobbyist because of the person's activities for compensation on behalf of a profession related to the operation of the commission;
- cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the other commission members.

The bill provides that the validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists. The bill provides that, if the commission's executive director or a commission member has knowledge that a potential ground for removal of a commission member exists, the executive director or the commission member, as applicable, must notify the presiding officer of the commission of the potential ground for removal. The presiding officer must then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director or the commission member, as applicable, must notify the other commission members, the governor, and the attorney general that a potential ground for removal exists.

C.S.H.B. 2843 provides for member training requirements. More specifically, the bill provides that a person who is appointed to and qualifies for office as a commission member may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with the following requirements. The training program must provide the person with information regarding:

- the subtitle of the Occupations Code added by the bill governing "Casino Gaming and Sports Wagering Regulated by Texas Gaming Commission" and other laws related to casino gaming or sports wagering or gambling regulated by the commission;
- the commission's programs, functions, rules, and budget;
- the results of the most recent formal audit of the commission;
- the requirements of laws relating to open meetings, public information, administrative procedure, and conflict of interest; and

- any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

C.S.H.B. 2843 provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

C.S.H.B. 2843 provides that the commission's executive director or the executive director's designee shall provide to commission members, as often as necessary, information regarding their qualifications for office, and responsibilities under applicable laws relating to standards of conduct for state officers.

C.S.H.B. 2843 provides that, before assuming the duties of office, a commission member must execute a \$25,000 bond payable to the state and conditioned on the member's faithful performance of the member's duties of office. The bill provides that the bond must be approved by the governor and that the cost of the bond must be paid by the commission.

C.S.H.B. 2843 provides that a commission member and the commission's executive director are appointed officers of a major state agency for the purposes of Chapter 572, Government Code (which governs applicable personal financial disclosures, standards of conduct, and conflicts of interest).

C.S.H.B. 2843 provides for the entitlement of commission members to an annual salary and a per diem, in amounts prescribed by appropriation, as well as reimbursement for actual and necessary expenses incurred by members in performing their duties. The bill provides that reimbursement for expenses is subject to any applicable limitation in the General Appropriations Act.

C.S.H.B. 2843 provides for the appointment by the gaming commission of an executive director who serves at the commission's pleasure. The bill provides that a person is not eligible for appointment as executive director if the person holds an elective office or is an officer or official of a political party or if the person is required to register as a lobbyist because of the person's activities for compensation on behalf of a profession related to the operation of the commission. The bill provides that the executive director must have five or more years of responsible administrative experience in public or business administration or possess broad management skills, that the executive director may not pursue any other business or occupation or hold any other office for profit, that the executive director must meet all eligibility requirements relating to commission members, and that the executive director is entitled to an annual salary and other compensation specified by the commission.

C.S.H.B. 2843 provides that the commission must maintain its primary office in Travis County and may maintain other offices it determines are necessary. The bill also provides that the commission's transactions are subject to audit by the state auditor.

The bill provides that the gaming commission may sue and be sued and that suit against the commission must be brought in Travis County. Service of process in a suit against the gaming commission may be secured by serving the executive director.

C.S.H.B. 2843 prohibits a gaming commission member from using their official authority to affect the result of an election or nomination for public office or directly or indirectly coercing, attempting to coerce, commanding, or advising a person to pay, lend, or contribute anything of value to another person for political purposes. The bill also prohibits a gaming commission member or their parent, spouse, or child from soliciting or accepting employment or any financial interest or benefit from a license holder under a law administered by the commission or

from an applicant for a license before the second anniversary of the date the member's service on the commission ends.

C.S.H.B. 2843 prohibits the executive director or their parent, spouse, or child from acquiring a direct or indirect interest in or being employed by an entity licensed or registered by the gaming commission in connection with the conduct of casino gaming or sports wagering or the provision of casino services in Texas before the second anniversary of the date the executive director's service to the commission ends.

C.S.H.B. 2843 subjects the gaming commission to the Texas Sunset Act and sets the commission to be abolished September 1, 2033, unless continued in existence as provided by that act. On the date the gaming commission is abolished, the bill's provisions regarding the commission and providing for the legalization and regulation of casino gaming and sports wagering, including through tribal gaming agreements, automatically expire.

#### *Powers and Duties*

C.S.H.B. 2843 establishes the scope of the general powers and duties of the gaming commission by providing that the commission has broad authority and must exercise strict control and close supervision over all activities authorized and conducted in Texas under a law administered by the commission. The bill requires the commission to ensure that all casino games, other casino gaming activities, sports wagering, and other gambling subject to the oversight or regulatory authority of the commission are conducted fairly and in compliance with the law. The bill also provides that the commission also has the powers and duties granted under the bill's provisions regulating casino gaming and sports wagering and the bill's provisions governing tribal gaming agreements. The bill requires that all aspects of laws administered by the commission must be administered by the executive director and the commission for the protection of the public and in the public interest. The bill grants the commission and the executive director full power and authority to hold hearings and, in connection with the hearings, to issue subpoenas, to compel the attendance of witnesses at any place in Texas, to administer oaths, and to require testimony under oath. The bill provides that any process or notice relating to a hearing may be served in the manner provided for service of process and notices in civil actions. The bill authorizes the commission and the executive director to pay transportation and other expenses of witnesses as they consider reasonable.

C.S.H.B. 2843 authorizes the executive director and the executive director's authorized employees to do the following:

- inspect and examine a premises where casino gaming, sports wagering, or other gambling regulated by the gaming commission is conducted or equipment or supplies, including an electronic or other gaming device, or associated equipment is manufactured, assembled, produced, programmed, sold, leased, marketed, distributed, repaired, or modified for use in gaming;
- for good cause, seize and remove from a premises and impound equipment or supplies for the purpose of examination and inspection; and
- demand access to, inspect, examine, photocopy, or audit papers, books, and records of applicants and license holders, on their premises or elsewhere as practicable, in the presence of the applicant or license holder or their agent, that report the gross income produced by a gaming-related business, verify the gross income, or affect other matters on the enforcement of laws administered by the gaming commission.

The bill sets out provisions relating to a former license holder's furnishment and maintenance of books, papers, and records to the commission's executive director or the executive director's authorized employees for purposes of audits conducted after the cessation of casino gaming or sports wagering by a license holder. The former license holder must maintain all books, papers,

and records necessary for audits until at least the third anniversary of the date the license is surrendered or revoked and is responsible for the costs incurred by the commission in the conduct of an audit. If the former license holder seeks judicial review of a determination of deficiency of taxes imposed or files a petition for the commission's redetermination of such a deficiency determination, then the former license holder must maintain all books, papers, and records until a final order is entered on the determination. or judicial review.

The bill requires the gaming commission to contract with at least one independent testing laboratory to scientifically test and technically evaluate casino games, gaming devices, and associated equipment for compliance with applicable state law. The bill requires that the laboratory must have a national or international reputation of being demonstrably competent and must be qualified to scientifically test and evaluate all components of casino games, gaming devices, and associated equipment for compliance with applicable state law and to perform the functions assigned to it under applicable state law. The bill prohibits the laboratory from being owned or controlled by a person licensed to conduct casino games or sports wagering or to manufacture gaming devices or associated equipment. The bill requires that the use of an independent testing laboratory for purposes related to the conduct of casino gaming or sports wagering under applicable state law must be made from a list of at least two laboratories approved by the commission.

#### *Authority of Executive Director*

C.S.H.B. 2843 authorizes the executive director, with gaming commission approval, to create executive positions as the executive director considers necessary to implement the laws administered by the commission. The executive director must employ directors in the areas of audit, investigation, and enforcement, and the bill sets out qualifications for these directors. More specifically, the audit director must be a certified public accountant, have five or more years of progressively responsible experience in general accounting, and have a comprehensive knowledge of the principles and practices of corporate finance or must possess qualifications of an expert in the field of corporate finance and auditing, general finance, gaming, and economics, and other directors must possess five or more years of training and experience in the fields of investigation, law enforcement, law, or gaming. The bill authorizes the executive director to investigate, for the purpose of prosecution, a suspected criminal violation of laws related to casino gaming, sports wagering, or gambling regulated by the gaming commission. For administration and enforcement purposes, the executive director and employees designated as enforcement officers by the executive director may be commissioned as peace officers. The executive director, to further the objectives and purposes of laws related to casino gaming, sports wagering, or gambling regulated by the gaming commission, may do the following:

- direct and supervise all administrative actions of the gaming commission;
- bring legal action in the name and on behalf of the gaming commission;
- make, execute, and effect an agreement or contract authorized by the gaming commission;
- employ the services of persons considered necessary for consultation or investigation and set the salaries of or contract for the services of legal, professional, technical, and operational personnel and consultants, except that outside legal assistance may be retained only with the approval of the gaming commission;
- acquire all goods the executive director considers necessary or desirable in carrying out the executive director's functions; and
- perform other duties the executive director may consider necessary to effect the purposes of laws related to casino gaming, sports wagering, or gambling regulated by the gaming commission.

The bill requires the costs of administration incurred by the executive director to be paid in the same manner as other claims against the state are paid, except as otherwise provided by the bill.

### *Required Policies*

C.S.H.B. 2843 sets out requirements for the gaming commission to do the following:

- develop and implement policies that clearly separate the policy-making responsibilities of the gaming commission and the management responsibilities of the executive director and commission staff;
- implement a policy requiring the commission to use appropriate technological solutions to improve its ability to perform its functions, which must ensure that the public is able to interact with the gaming commission through its website; and
- develop and implement a policy to encourage the use of negotiated rulemaking procedures and alternative dispute resolution procedures, with the commission's procedures relating to alternative dispute resolution conforming, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings.

The bill requires the commission to designate an appropriately qualified person to coordinate the policy adopted to encourage the use of negotiated rulemaking procedures and alternative dispute resolution procedures, to serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and to collect data concerning the effectiveness of those procedures, as implemented by the commission.

### *Committees*

C.S.H.B. 2843 authorizes the gaming commission to appoint committees that it considers necessary to carry out its duties.

### Authorization of Casino Gaming and Sports Wagering

#### *Gaming and Wagering Authorized*

C.S.H.B. 2843 authorizes the gaming commission to implement casino gaming and sports wagering in accordance with the bill's provisions and requires the commission to allow the operation of limited casino gaming or sports wagering under the bill's provisions at locations on Indian lands in accordance with an effective gaming agreement and in compliance with applicable federal law. For purposes of the bill's provisions, "sports wagering" means placing a wager on a live sporting event as authorized by the bill's provisions, and "live sporting event" means:

- a football, basketball, baseball, hockey, or similar game;
- a boxing or martial arts match; or
- any other event designated by the gaming commission.

The bill clarifies that sports wagering is authorized only under a license issued by the gaming commission and is subject to commission rules.

#### *Prohibited Gambling Games*

C.S.H.B. 2843 prohibits the executive director or any other person from establishing or operating a gambling game in which the winner is chosen on the basis of the outcome of a live sporting event except as specifically provided by the bill or other law. The bill also establishes that the operation of any game using a slot machine or other gaming device is prohibited except as provided by the bill or by the Bingo Enabling Act.

#### *Casino License*

C.S.H.B. 2843 authorizes casino gaming and sports wagering to be lawfully conducted in a casino operating under a casino license as defined in the bill. The bill requires the gaming commission to issue licenses as required and limited by the Texas Constitution and prohibits a



person from owning an equity interest in a casino at which casino gaming, sports wagering, or other gambling is conducted in Texas unless the casino is operating under a casino license issued for the conduct of gambling at that casino. A separate license must be obtained for each casino conducting casino gaming, sports wagering, or other gambling regulated by the gaming commission. The bill authorizes the gaming commission to issue a temporary license authorizing the casino license holder to temporarily conduct casino gaming and sports wagering in accordance with commission rules at a location within 20 miles of the location for which the casino license was issued and requires a temporary license to expire not later than the first anniversary of the issuance date. The bill prohibits the gaming commission from issuing a casino license if issuance would cause the number of active casino licenses to exceed a limit on the number of active casino licenses established by the Texas Constitution or the bill and further prohibits the gaming commission from issuing a license for a casino located outside of an area authorized under the Texas Constitution or the bill's provisions for a casino location. For purposes of the bill's provisions, "active casino license" means a casino license issued by the commission that has not expired without being renewed, been revoked, or been permanently surrendered. For purposes of determining a casino's location, the casino is considered to be located in the county in which the casino's main public entrance is located.

C.S.H.B. 2843 authorizes a person to apply for a casino license by submitting an application in accordance with gaming commission rules containing information the commission finds necessary to determine the suitability and eligibility of the applicant, the eligibility of the proposed location, and the economic impact of the overall destination resort or casino project. The bill caps at two the number of casino licenses for which a single applicant may apply and requires a separate application for each destination resort for which a casino license is sought. The bill sets out certain information an application must include concerning the feasibility of the overall destination, as follows:

- evidence that the applicant possesses, or has the right to acquire, sufficient real property on which the proposed destination resort will be located that accommodates the applicant's construction and operation of the destination resort substantially as proposed;
- evidence that the applicant will meet, and a specific schedule for meeting, all requirements established by the Texas Constitution to conduct casino gaming and sports wagering, including satisfaction of any minimum new investment commitment;
- evidence of the applicant's good character, honesty, and integrity;
- evidence that issuance of the casino license will not be detrimental to the public interest or the casino gaming and sports wagering industry;
- a detailed estimate of the total new investment to be made by the applicant for the destination resort and evidence of the applicant's financial capacity to operate and complete development of the destination resort;
- evidence that the applicant possesses, or reasonably expects to obtain, all state, county, and municipal permits and approvals necessary for the construction and operation of the proposed destination resort within the time prescribed by the bill's provisions; and
- evidence that the applicant is prepared to begin construction of its proposed destination resort not later than the second anniversary of the date the casino license is issued and to proceed with the construction of the destination resort without unnecessary delay.

C.S.H.B. 2843 authorizes the gaming commission to issue a casino license to a federally recognized Indian tribe for which Indian lands in Texas were held in trust by the United States on January 1, 1998, in addition to casino licenses issued under the bill's other provisions. The license issued to such an Indian tribe authorizes the Indian tribe to operate not more than one casino on such Indian lands and constitutes an agreement between the state and the tribe for purposes of the federal Indian Gaming Regulatory Act. An applicable Indian tribe may, in lieu of operating a casino under a casino license, operate a casino on such Indian lands under an agreement with the state, which is governed by provisions set out by the bill. The bill prohibits

the gaming commission from issuing a casino license for a location in which casino gaming or sports wagering is prohibited under a gaming agreement between an Indian tribe and the state.

C.S.H.B. 2843 conditions a company's eligibility to apply for and hold a casino license on the company complying with all state laws and being incorporated or organized and in good standing in Texas or organized under the laws of another state of the United States and qualified to conduct business in Texas. The bill provides that an application may not be considered filed unless it includes the requisite information concerning destination feasibility and is accompanied by the required application fee. An application must be submitted to the gaming commission by the date established by the commission in order for the applicant to be eligible to hold a casino license.

C.S.H.B. 2843 requires the gaming commission to issue an order approving or denying an application for a casino license not later than 180 days after the date the application is filed and authorizes the commission to adopt rules for issuing any temporary or interim license as the commission finds necessary. The bill sets a casino license to expire on the 50th anniversary of the date of issuance and authorizes the license to be renewed for one or more 50-year terms.

C.S.H.B. 2843 requires the gaming commission to determine the initial and continuing suitability of each applicant for or holder of a casino license based on suitability criteria prescribed by commission rule to ensure: that all casino license holders are of good character, are honest, have integrity, and are financially stable; that a casino license holder has sufficient business probity and competence; and that a casino license holder meets other applicable qualifications for the issuance of the license. The bill places the burden of proving suitability to receive or hold a casino license on the applicant or license holder. The bill sets out certain factors the gaming commission must consider in considering the initial and continuing suitability of an applicant for or holder of a casino license, as follows:

- whether the applicant or casino license holder is a qualified applicant as described by the Texas Constitution;
- the applicant's or casino license holder's experience in conducting licensed casino gaming and sports wagering operations and the applicant's financial ability to promptly construct and adequately maintain the proposed casino project; and
- the applicant's or casino license holder's progress toward satisfying any minimum investment commitment required by the Texas Constitution and the schedule specified in the application.

The bill also lists the following persons connected to an applicant or license holder whose suitability may be considered in considering the applicant's or license holder's suitability:

- each person holding an equity interest in the applicant or license holder requiring qualification under the bill's provisions;
- each person holding or proposed to receive an operator license, occupational license, or manufacturer license employed by or conducting business with the applicant or license holder; and
- each affiliate of the applicant or license holder.

The bill requires the gaming commission to give due consideration to the protection of the public health, safety, morals, and general welfare of the people of Texas and for the reputation of the state's casino gaming and sports wagering industry. In determining whether an applicant meets any minimum investment commitment required by the Texas Constitution, the commission may not consider the expenditure of any public money or facilities developed or built with public assistance or tax incentives of any kind.

C.S.H.B. 2843 prohibits an applicant for or holder of a casino license from receiving or holding a casino license if the person or an officer or director:

- has been convicted of a felony in the past 20 years under Texas law or the law of any other state or the United States;

- has ever, or retains or employs another person who has ever, knowingly or intentionally submitted an application for a license under the bill's provisions that contained false information;
- served as a principal manager for an applicant or license holder who has a disqualifying felony conviction or who has ever submitted a disqualifying application as detailed above;
- holds a manufacturer license or casino service license;
- is a gaming commission member; or
- is a member of the judiciary or an elected official of the state.

The bill defines "principal manager" as a person who, as determined under gaming commission rules, holds or exercises managerial, supervisory, or policy-making authority over the management or operation of a casino gaming or sports wagering activity or casino service that in the commission's judgment warrants the occupational licensing as a principal manager for the protection of the public interest. The term includes a key executive of a company license holder. "Key executive" means a corporation's directors and executive officers, a partnership's general partners, a trust's trustee, a joint venture's managing venturers, and each person possessing similar responsibilities and authorities in any other form of business organization. "Director" means a member of the board of directors of a corporation or a person performing similar functions for a company that is not a corporation.

C.S.H.B. 2843 provides that, in addition to all other applicable considerations and suitability criteria, if the Texas Constitution requires a casino license applicant to be selected through an open bid process, the gaming commission must consider the following factors when selecting the applicant:

- the relevant financial investment each competing applicant will make for the applicant's proposed destination resort project;
- the relative prospective revenue the state will collect from casino gaming and proposed nongaming businesses associated with the applicant's proposed destination resort project;
- the relative number of Texas residents who would be employed at the applicant's proposed destination resort project and any proposed nongaming businesses and the extent of the applicant's good faith plan to recruit, train, and promote a workforce that reflects the diverse populations of Texas in all employment classifications;
- the relative extent to which the applicant's proposed destination resort and any proposed associated hotel and other nongaming businesses could be reasonably expected to encourage interstate tourism to Texas;
- the relative extent to which the scope, design, location, and construction of the applicant's destination resort and any proposed associated hotel and other nongaming businesses could be reasonably expected to contribute to the local economy; and
- the relative commitment of the applicant to product procurement for the applicant's operations from vendors based in Texas.

C.S.H.B. 2843 authorizes the gaming commission to adopt rules providing for a person's reciprocal determination of suitability to hold a casino license based partly on a determination of suitability to own and operate a casino in any other jurisdiction the commission considers reasonable for the bill's purposes.

C.S.H.B. 2843 establishes that a casino license authorizes casino gaming or sports wagering only at the specific site identified in the license and that the license is not transferable unless the transfer is approved in advance by the gaming commission. The bill provides for the gaming commission's authority to issue a replacement casino license, as follows:

- to an applicant that proposes to conduct casino gaming or sports wagering at a destination resort location where casino gaming or sports wagering was previously conducted under

a casino license that expired without being renewed or was revoked or permanently surrendered; or

- at a new destination resort located in the same metropolitan statistical area as such a destination resort location, on condition that the license holder make minimum new investments for the development of a destination resort in the amount required by the Texas Constitution of an initial qualified applicant for the license.

The bill prohibits the gaming commission from issuing such a replacement casino license if issuing the license would cause the number of active casino licenses to exceed a limit on the number of active casino licenses established by the Texas Constitution or the bill's provisions. The bill requires the gaming commission, in determining whether to issue a replacement casino license to an applicant, to determine the initial suitability of the applicant using the requirements and considerations specified in the bill's provisions that govern mandatory license requirements and considerations for initial and continuing suitability for casino licenses. The bill authorizes the gaming commission to adopt rules providing additional considerations and requirements related to issuance of a replacement casino license.

C.S.H.B. 2843 provides for the denial, suspension, and revocation of casino licenses by doing the following:

- authorizing the gaming commission to deny an application for a casino license or suspend or revoke a casino license after determining that the applicant is unsuitable to be issued or the license holder is unsuitable to continue to hold a casino license based on the applicant's or license holder's failure to meet or maintain the mandatory license requirements or the applicant's or license holder's lack of suitability as determined by the commission under the bill's provisions governing considerations for initial and continuing suitability for a casino license;
- requiring the gaming commission to conduct an investigation and a hearing if the commission has reasonable grounds to believe that an applicant is unsuitable to hold or a license holder is unsuitable to continue to hold a casino license and authorizing the commission, based on its determination, to deny issuance of the license or suspend, limit, or revoke the license;
- requiring a casino license holder, on suspension or revocation of their license, to immediately cease all casino gaming and sports wagering activities;
- providing that, if a casino license holder fails to begin construction of a casino by the second anniversary of the date the license was issued, or fails to begin casino gaming or sports wagering operations by the fifth anniversary of the date the license was issued, the gaming commission may require forfeiture of the license, unless the commission for good cause previously granted an appropriate extension of time; and
- requiring the gaming commission to adopt rules regarding the criteria and procedure for granting such an extension of time.

C.S.H.B. 2843 requires a person who directly or indirectly owns an equity interest in an applicant for or holder of a casino license to register and qualify with the gaming commission under commission rules and provide information the commission finds necessary to determine the suitability and eligibility of the person to retain the interest. A registration must be accompanied by the required application fee. The bill exempts the following persons from registration or qualification:

- a key employee of the casino license holder that is required to apply for an occupational license under the bill's provisions;
- an institutional investor that is a record owner of 25 percent or less of the total equity of the casino license holder;
- a person that beneficially owns five percent or less of the total equity of the casino license holder; and
- any other group or class of persons that the gaming commission by rule exempts from registration or qualification.

However, the bill requires a casino license holder to provide to the gaming commission the name, address, and interest in the casino license holder of each person who is exempt from registration or qualification. For the bill's purposes, an "institutional investor" is a person, other than a state or federal government pension plan, that meets the requirements of a qualified institutional buyer, as that term is defined by applicable federal regulation, and is one of the following:

- a bank as defined by the federal Securities Exchange Act of 1934;
- an insurance company or collective trust fund as defined or described by the federal Investment Company Act of 1940, as applicable;
- an investment company registered under the federal Investment Company Act of 1940 or an investment adviser registered under the federal Investment Advisers Act of 1940, respectively;
- an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the gaming commission;
- a state or federal government pension plan;
- a group composed entirely of any of the persons listed above; or
- any other person the gaming commission determines for reasons consistent with the state's public policies expressed in the bill.

C.S.H.B. 2843 provides the following with respect to the transferability of equity interest and limitations on ownership:

- a casino license holder may not issue an equity interest to a person without the gaming commission's determination of the qualification of the proposed subscriber or purchaser to hold the interest, except that a casino license holder that is a publicly held company or is wholly owned by one or more publicly held companies may issue equity interests of five percent or less of its equity interest to any person without the commission's consent;
- a person beneficially owning more than five percent of the equity interest of a casino license holder may not do the following:
  - transfer an interest in the license holder requiring qualification with the gaming commission to any person without the commission's determination of the qualification of the proposed transferee to hold the interest, except that a person may transfer not more than five percent of their interest in the license holder to an affiliate of the transferor or an individual related to the transferor within the fourth degree by affinity or consanguinity (as determined by Government Code provisions governing computation of degrees of relationship), provided that notice is given to the commission at least 90 days before the transfer; or
  - simultaneously beneficially own more than five percent of the equity interest of more than one other casino license holder;
- a subscriber or proposed transferee of an interest by a casino license holder must provide to the gaming commission the information the commission considers necessary to determine the qualification of the person, and the commission, not later than the 60th day after the date of the application, must determine the qualification of a subscriber or proposed transferee and approve or deny the issuance or transfer.

An "affiliate" is a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. A person is considered to control a company if the person beneficially owns more than a five percent equity interest in the company under the beneficial ownership rules adopted by the gaming commission.

C.S.H.B. 2843 requires the gaming commission to determine the qualification of a person to acquire or continue to hold an equity interest in an applicant for or holder of a casino license based on the qualification requirements the commission adopts for the protection of the public interest to ensure that persons holding securities issued by license holders are of good character, are honest, have integrity, and are financially stable, and are otherwise qualified to hold the

interest. The burden of proving qualification is on the person acquiring or holding the interest, and a person is unsuitable to acquire or retain such an equity interest if they would be unsuitable to receive a casino license under the bill's provisions that prohibit a person from receiving a casino license if the person or an officer or director:

- has been convicted of a felony in the past 20 years under Texas law or the law of any other state or the United States;
- has ever, or retains or employs another person who has ever, knowingly or intentionally submitted an application for a license under the bill's provisions that contained false information;
- served as a principal manager for an applicant or license holder who has a disqualifying felony conviction or who has ever submitted a disqualifying application as detailed above;
- holds a manufacturer license or casino service license;
- is a gaming commission member; or
- is a member of the judiciary or an elected official of the state.

The bill requires the gaming commission, if the commission has reasonable grounds to believe that a person holding an applicable equity interest may be unqualified to retain the person's interest, to conduct an investigation and a hearing under the bill's provisions, and the bill authorizes the gaming commission, based on the commission's determination, to issue an unsuitability finding and divestiture order to the holder of the interest and the issuer of the interest. The bill provides that, on receipt of a divestiture order, the person holding the interest must tender the person's entire interest for purchase to the issuer or a third party on terms the gaming commission approves. The bill prohibits an equity interest holder subject to a divestiture order from receiving, directly or indirectly, a dividend, interest, payment, or distribution of any kind relating to the security that is the subject of the order, and from exercising, directly or indirectly, any voting power or other right with respect to the security to which the order relates. The bill allows a person subject to an order to receive payment for the sale of the person's interest on terms the gaming commission approves.

C.S.H.B. 2843 provides the following with respect to horse racing, greyhound racing, and the scope of the gaming commission's authority over racetrack associations:

- the gaming commission by rule must ensure that a casino license holder that is also a racetrack association holding a license for a class 1 racetrack continues to conduct horse race meetings consistent with a minimum number of horse racing days that were conducted in 2022;
- if required by the Texas Constitution, a racetrack association that holds a license to conduct horse race meetings at a racetrack under state law must cease all horse racing operations at the racetrack and surrender that license as a condition of receiving and holding a casino license or designating a person to receive and hold a casino license as provided by the Texas Constitution;
- a racetrack association that holds a license to conduct greyhound racing must cease all greyhound racing operations and surrender the license as a condition of receiving and holding a casino license or designating a person to receive and hold a casino license as provided by the Texas Constitution;
- a casino license holder that is also a racetrack association must keep the license holder's casino operations and financial records separate from the racetrack association's racing operations and records, except as otherwise authorized by the gaming commission; and
- an activity regulated by the Texas Racing Commission under the Texas Racing Act is not subject to regulation by the gaming commission.

For purposes of those provisions, the bill gives the terms "greyhound racing", "horse race meeting", "horse racing day", and "racetrack association" the meanings assigned to those terms by the general definitions section of the Texas Racing Act. The bill defines "Class 1 racetrack" as

a class 1 racetrack described by the Texas Racing Act provision that describes and governs what a class 1 racetrack is.

C.S.H.B. 2843 establishes that a destination resort at which casino gaming is authorized is subject to any applicable local government zoning and land use regulations in place on January 1, 2023. To the extent a destination resort could satisfy the criteria for classification as more than one regulated entity or be subject to more than one body of regulations, a local government zoning and land use authority must classify and regulate a destination resort under the most permissive classification and regulations so as to ensure the maximum economic benefit to Texas in the shortest possible time.

#### *Operator and Occupational Licenses*

C.S.H.B. 2843 requires a person to obtain an operator license, as defined by the bill, to provide services as an operator and requires a person to hold an occupational license, as defined by the bill, to be employed as a gaming employee. The bill requires an operator license holder to hold a separate operator license for each casino that the license holder operates and establishes that a casino license holder or operator license holder is not required to obtain an occupational license to provide services as a gaming employee in the casino to which the license relates. The bill requires a casino license holder to designate at least one occupational license holder as a key employee with responsibility over all gaming activities and requires the gaming commission to note on each key employee's occupational license that the individual is designated as a key employee. At least one key employee must be available at the casino at all times when casino gaming or sports wagering is conducted on the casino license holder's premises.

C.S.H.B. 2843 establishes that an application for an operator license or occupational license must be made in compliance with commission rules, must contain information the gaming commission finds necessary to determine the suitability and eligibility of the applicant to function as a casino operator or to be employed or retained as a gaming employee, and must be accompanied by the required application fee. The bill specifies that a person is eligible to apply for and hold an operator license or occupational license without regard to residency. The bill provides for the issuance of temporary operator licenses and occupational licenses, and the bill requires the gaming commission to adopt rules regarding the terms of such temporary licenses.

The bill authorizes the gaming commission to deny an application for or suspend, limit, or revoke an operator license or occupational license for any reasonable cause. The bill requires the gaming commission, if the commission has reasonable cause to believe that an operator license holder or occupational license holder may be unsuitable to hold the license, giving due consideration to the protection of the health, safety, morals, and general welfare of Texas and to the reputation of the Texas's casino gaming industry, to conduct an investigation and a hearing under the bill's provisions. The bill authorizes the gaming commission, based on the commission's determination, to suspend, limit, or revoke an operator license or occupational license. The bill requires, on suspension or revocation of an operator license or occupational license, the operator license holder or occupational license holder to cease providing all services in any capacity requiring an operator license or an occupational license. The bill prohibits a holder of an operator license or occupational license that has been suspended or revoked from doing the following while the license is suspended or revoked:

- receiving, directly or indirectly, any compensation, consideration, or payment of any kind relating to the conduct of casino gaming or sports wagering in any capacity requiring an operator license or occupational license, other than the payment for services rendered before the suspension or revocation; and
- serving or functioning in a capacity that would require an operator license or occupational license.

The bill also provides for the gaming commission's determination of suitability of an applicant for or holder of an operator or occupational license. The bill requires the gaming commission to determine such suitability based on suitability criteria the commission adopts in order to ensure that a license holder: is of good character, is honest, and has integrity; has sufficient business probity, competence, and training or experience in the gaming industry to perform the function contemplated; and is otherwise qualified to be licensed. The bill places the burden of proving suitability to hold an operator license or occupational license on the applicant or license holder. The bill requires the gaming commission, in considering the suitability of a company applying for or holding an operator license or occupational license to hold the license, to consider the suitability of each principal manager and each holder of more than five percent of the equity interest of the company to individually hold an occupational license based on the suitability standards that apply to an applicant for the license generally. The bill provides that a person may not be found suitable to hold an operator license or occupational license if that person would be found unsuitable to hold a casino license under the bill's provisions that prohibit a person from receiving a casino license if the person or an officer or director:

- has been convicted of a felony in the past 20 years under Texas law or the law of any other state or the United States;
- has ever, or retains or employs another person who has ever, knowingly or intentionally submitted an application for a license under the bill's provisions that contained false information;
- served as a principal manager for an applicant or license holder who has a disqualifying felony conviction or who has ever submitted a disqualifying application as detailed above;
- holds a manufacturer license or casino service license;
- is a gaming commission member; or
- is a member of the judiciary or an elected official of the state.

However, the bill provides for an exception to allow an applicant for an operator license or occupational license who has been convicted of a felony to be found suitable if the applicant is found to be adequately rehabilitated under applicable rehabilitation requirements adopted by the gaming commission and is otherwise suitable for licensing.

C.S.H.B. 2843 defines "gaming employee" as an individual directly involved in the operation or conduct of casino gaming or sports wagering in a casino performing a service in a capacity that the gaming commission finds appropriate for occupational licensing and includes the following occupations:

- a boxman, a cashier, change personnel, counting room personnel, a dealer, a floor person, a host empowered to extend credit or complimentary services, a keno runner, a keno writer, a machine mechanic, or security personnel;
- a shift or pit boss or a supervisor or manager involved in casino gaming or sports wagering activities;
- accounting or internal auditing personnel directly involved in recordkeeping or the examination of records generated from casino gaming or sports wagering activities; and
- a junketeer or other independent agent whose compensation is based on the amount of money a patron wagers or loses or who is paid per patron more than the price of admission.

Bartenders, cocktail waitresses, and other individuals engaged exclusively in preparing or serving food or beverages or individuals providing nominal or maintenance services are not gaming employees.

C.S.H.B. 2843 defines "operator" as a person other than the casino license holder who contractually agrees to provide operational and managerial services on behalf of the casino license holder for the operation of any activities occurring at the casino in return for a payment based wholly or partly on profits or receipts from the conduct of casino gaming or sports wagering.



## *Manufacturer and Casino Service Licenses*

C.S.H.B. 2843 requires the gaming commission to adopt rules identifying segments of the manufacturing industry directly involved in the design, manufacture, assembly, production, programming, sale, lease, marketing, distribution, repair, or modification of slot machines or component parts of slot machines that the commission finds appropriate for licensing and requires a person to hold a manufacturer license, as defined by the bill, to engage in any such segment of the slot machine manufacturing industry in Texas. This license requirement applies only to slot machines manufactured for use in Texas. A manufacturer license is personal to the license holder and allows the license holder to conduct business with any casino.

C.S.H.B. 2843 requires the gaming commission to adopt rules identifying segments of the casino service industry directly involved with providing gaming-related services, equipment, and supplies that the commission finds appropriate for licensing and requires a person to hold a casino service license, as defined by the bill, to engage in any such segment of the casino service industry. A person is also required to hold a casino service license if the person operates, conducts, or maintains a casino gaming- or sports wagering-related business or if the person furnishes goods, property, or services to a casino in exchange for:

- a payment based on a percentage of the earnings, profits, or receipts from the casino; or
- a payment the commission finds to be grossly disproportionate to the value of the goods, property, or service provided.

A casino service license is personal to the license holder and allows the license holder to conduct business with any casino. A utility company, a retail electric provider, a municipality, or another political subdivision is not required to obtain a casino service license, and a casino license holder or operator license holder or an employee, officer, or director of a casino license holder or operator license holder is not required to obtain a casino service license to provide services for the casino to which the casino license or operator license relates.

C.S.H.B. 2843 establishes that an application for a manufacturer license or casino service license must be submitted in accordance with gaming commission rules, contain information the commission finds necessary to determine the suitability and eligibility of the applicant, and be accompanied by the required application fee.

The bill authorizes the gaming commission to deny an application for or suspend, limit, or revoke a manufacturer license or casino service license for any reasonable cause. The bill requires the gaming commission, if the commission has reasonable cause to believe that a manufacturer license holder or casino service license holder may be unsuitable to hold the license, giving due consideration to the protection of the health, safety, morals, and general welfare of Texas and to the reputation of the Texas's casino gaming and sports wagering industry, to conduct an investigation and a hearing under the bill's provisions. The bill authorizes the gaming commission, based on the commission's determination, to suspend, limit, or revoke the license. The bill requires, on suspension or revocation of a manufacturer license or casino service license, the manufacturer license holder or casino service license holder to cease providing manufacturing activity or casino service requiring a license. The bill prohibits an affected license holder, after the revocation or suspension of the license and while the license is revoked or suspended, from receiving, directly or indirectly, compensation, consideration, or payment of any kind relating to manufacturing activity or provision of casino services in any capacity requiring a license, other than the payment for goods or services provided before the suspension or revocation. However, the bill clarifies that a casino license holder or operator license holder who has entered into a lease with a manufacturer license holder or casino services license holder whose license has been revoked or suspended may continue to make payments on the lease based on the original terms and conditions of the lease without modification or may

accelerate the lease and pay the remainder of the lease, at the sole option of the casino license holder or operator license holder.

C.S.H.B. 2843 establishes that the burden of proving suitability to receive and hold a manufacturer license or casino service license is on the applicant or license holder. The bill provides for a determination of suitability of a person to hold a manufacturer license or casino service license. The bill prohibits the gaming commission from finding a person suitable to hold a manufacturer license or casino service license if that person would be found unsuitable to hold a casino license under the bill's provisions that prohibit a person from receiving a casino license if the person or an officer or director:

- has been convicted of a felony in the past 20 years under Texas law or the law of any other state or the United States;
- has ever, or retains or employs another person who has ever, knowingly or intentionally submitted an application for a license under the bill's provisions that contained false information;
- served as a principal manager for an applicant or license holder who has a disqualifying felony conviction or who has ever submitted a disqualifying application as detailed above;
- holds a manufacturer license or casino service license;
- is a gaming commission member; or
- is a member of the judiciary or an elected official of the state.

However, the bill provides for an exception to allow an applicant for a manufacturer license or casino service license who has been convicted of a felony to be found suitable if the applicant is found to be adequately rehabilitated under applicable rehabilitation requirements adopted by the gaming commission and the applicant or license holder is otherwise suitable for licensing. In considering the suitability of a company applying for or holding a manufacturer license or casino service license to receive and continue to hold the license, the commission must consider the suitability of each principal manager and each holder of more than five percent of the equity interest of the company to individually receive and hold a manufacturer license or casino service license based on the suitability standards that apply to the company.

#### *References to License*

C.S.H.B. 2843 provides that a reference in the bill's provisions to a license applies to a certificate of registration, finding of suitability, or other affirmative regulatory approval provided under those provisions or gaming commission rule, unless otherwise expressly provided by state or federal law or gaming commission rule.

#### *Consent to Gaming Commission Determination*

C.S.H.B. 2843 establishes that a license application constitutes a request to the gaming commission for a decision on the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with casino gaming or sports wagering in the manner or position sought. By filing an application with the gaming commission, the applicant specifically consents to the commission's determination if the application, after filing, becomes moot for any reason other than death.

#### *License Renewal and Fees*

C.S.H.B. 2843 sets the term of an original or renewal license other than a casino license at one year and sets the various application fees at the following amounts:

- for an applicant for a casino license, regardless of whether the destination resort with the casino has been constructed:

- \$2.5 million for a license for a casino located within a destination resort that requires a minimum new investment commitment of at least \$2 billion;
- \$1.25 million for a license for a casino located within a destination resort that requires a minimum new investment commitment of at least \$1 billion; or
- \$500,000 for a license for a casino located within a destination resort that requires a minimum new investment commitment of at least \$250 million;
- \$1,000 for an applicant for a manufacturer or operator license;
- \$200 for an applicant for a casino service license;
- \$200 for a person registering and applying to qualify to hold an equity interest in a license holder; and
- \$100 for an applicant for an occupational license.

The bill requires all application fees to be in the form of a money order or cashier's check and be payable to the gaming commission, except that the commission may provide for the payment of the fees by electronic funds transfer or similar method. The bill establishes that application fees are nonrefundable and requires the fees to be deposited in the Texas Casino Gaming Fund, which is established by the bill, for use for the gaming commission's operation. Application fees must be applied toward the cost of investigating applicants' suitability for licensing or qualification, and any costs of investigation incurred in excess of the application fee must be paid by the applicant, except that the gaming commission by rule may provide for an exception to this requirement for casino service licenses and occupational licenses. Applicants who are granted a license other than a casino license must renew their license annually and pay a renewal fee equal to the initial application fee.

#### *Implementation of Gaming; Initial Licensing*

C.S.H.B. 2843 requires the gaming commission, as soon as practicable after the bill's effective date, to adopt the rules necessary to implement casino gaming and sports wagering in accordance with applicable bill provisions and in anticipation of receiving license applications not later than September 1, 2025.

#### *Licensing as Revocable Personal Privileges*

C.S.H.B. 2843 establishes that a license applicant does not have any right to the license sought and that any license issued is a revocable privilege and not a right or property under the U.S. Constitution or the Texas Constitution. An applicant or license holder does not acquire any vested right in or under the privilege.

C.S.H.B. 2843 grants state courts jurisdiction to review a decision to deny, limit, or condition a casino license under the bill's provisions governing judicial review of denial, suspension, revocation, or fine imposition or if judicial review is sought on the ground that the denial, limitation, or condition violates the Texas Constitution or is based on a suspect classification, such as race, color, religion, sex, or national origin, in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The state court must affirm the gaming commission's action unless the violation is proven by clear and convincing evidence.

C.S.H.B. 2843 prohibits an original or renewal license from being transferred or assigned to another person unless approved in advance by the gaming commission and further prohibits a license from being pledged as collateral. The bill requires a purchaser or successor of a license holder to independently qualify for a license required by the bill. The bill renders the following acts void unless approved by the gaming commission before the act occurs or not later than the 60th day after the date the act occurs:

- the transfer, sale, or other disposition of an interest in the license holder that results in a change in the identity of an equity interest holder requiring qualification under the bill; or

- the sale of the assets of the license holder, other than assets bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined to have met the applicable qualifications.

#### *Other Findings of Suitability*

C.S.H.B. 2843 authorizes the gaming commission, in its discretion and for purposes of promoting the integrity and security of casino gaming and sports wagering, to require a finding of suitability for any person conducting business with or in relation to the operation of casino gaming or sports wagering who is not otherwise required to obtain a license from the commission for the person's gaming-related operations.

#### *Texas Casino Gaming Fund*

C.S.H.B. 2843 establishes the Texas Casino Gaming Fund as a special fund in the state treasury to be used only for the gaming commission's operation and for the administration of the bill's provisions authorizing and regulating casino gaming and sports wagering. The bill requires that all application fees and investigation fees, collected by the gaming commission or on the commission's behalf, related to casino gaming be deposited to the credit of the fund. The bill authorizes the amount of money in the fund that exceeds the amount necessary for its authorized uses to be transferred to the general revenue fund as authorized by the legislature. The gaming commission's operation and the administration of the bill's provisions regulating casino gaming and sports wagering are to be supported by fees generated under those provisions and by a portion of the taxes imposed by the bill. The bill establishes that money in the fund may be appropriated only to the gaming commission for the commission's operation and the administration of applicable bill provisions for the 2024-2025 biennium.

#### *Taxes*

C.S.H.B. 2843 imposes a casino gaming tax on each casino license holder in an amount equal to 15 percent of the gross casino gaming revenue of the casino operated under the license. "Gross casino gaming revenue" means the total amount of the following, less the sum of all money paid as losses to patrons playing a casino game, the amounts paid to purchase from independent financial institutions annuities to fund losses paid to patrons playing a casino game, and the items deductible as losses under the bill's provision governing determination of gross casino gaming revenue (explained below):

- money received by a casino license holder from players playing casino games;
- money received by a casino license holder in payment for credit extended by the casino license holder to a patron for the purposes of casino gaming; and
- compensation received by a casino license holder for conducting any casino game in which the license holder is not a party to a wager.

That gross casino gaming revenue does not include the following:

- counterfeit money or tokens;
- coins of other countries that are received in slot machines or other gaming devices;
- cash taken in fraudulent acts perpetrated against a casino license holder for which the license holder is not reimbursed; or
- cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

C.S.H.B. 2843 provides, in provisions governing determination of gross casino gaming revenue, that, in calculating gross casino gaming revenue, a prize, premium, drawing, benefit, or ticket that is redeemable for money, merchandise, or other promotional allowance, except money, chips, or tokens paid at face value directly to a patron as the result of a specific wager and the amount of cash paid to purchase an annuity to fund winnings, may not be deducted as a loss at

any game except a slot machine or a table game with a progressive jackpot. In calculating gross casino gaming revenue from slot machines at a casino, the actual cost to the license holder of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, but travel expenses, food, refreshments, lodging, or services at the license holder's casino may not be deducted. For this purpose, personal property is distributed as the result of a legitimate wager if a patron must make a wager before receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

C.S.H.B. 2843 provides for the allocation of casino gaming tax revenue as follows:

- the comptroller of public accounts must deposit two percent to the credit of the horse industry escrow account established under Texas Racing Act provisions and administered by the Texas Racing Commission to be used as horse racing purses in Texas;
- three percent must be allocated to the Texas Casino Gaming Fund to support the gaming commission's operation and administration of the bill's provisions authorizing and regulating casino gaming and sports wagering;
- one-half of one percent must be allocated to the general revenue fund and may be appropriated only to fund a compulsive gambling program established under the bill's provisions;
- \$1 million may be appropriated in each state fiscal biennium to the Department of Public Safety (DPS) to be used to provide grants to prosecuting attorneys for the investigation and prosecution of offenses related to the possession of gambling devices;
- 10 percent may be appropriated only to fund public safety programs; and
- 80 percent may be appropriated only to fund education, provided that, if a constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, renaming the National Research University Fund as the Texas University Fund is approved by the voters and takes effect, an amount equal to the lesser of \$1 billion each state fiscal year or 80 percent of the casino gaming tax revenue collected each state fiscal year must be allocated to the Texas University Fund.

For purposes of the bill's provisions, "education" means public education, higher education (including the creation of a permanent fund for the benefit of higher education institutions not included in the permanent university fund established by the Texas Constitution), and adult education related to responsible gaming. Also, the bill defines "public safety program" to mean a program for crime prevention and law enforcement, including a program designed to prevent and prosecute crimes involving human trafficking and money laundering.

To promote the growth of live horse racing in Texas, the racing commission must allocate the amounts deposited to the horse industry escrow account under the bill's provisions to horse racetrack associations based on the number of live race dates each licensed horse racetrack association conducts. The bill authorizes the racing commission to adopt rules to implement that allocation requirement.

Existing law, in provisions of the Texas Racing Act and the Tax Code, requires the comptroller of public accounts, in each state fiscal biennium, to deposit to the credit of the horse industry escrow account the amounts equal to the proceeds from the collection of the sales and use taxes imposed on the sale, storage, or use of certain horse-related goods (such as horse feed) and other taxable expenditures directly related to horse ownership, riding, or boarding. However, existing law contains the limitation that the comptroller deposits those amounts into the horse industry escrow account only until the comptroller determines the amount deposited into the escrow account in that fiscal biennium equals the greater of: the amount appropriated to the racing commission for the purposes of the escrow account, as provided by the Texas Racing Act, for that fiscal biennium; or \$50 million. Under existing law, once the comptroller determines that the greater of the amount appropriated to the racing commission for the purposes of the escrow account, as provided by the Texas Racing Act, for that fiscal biennium or the amount of \$50

million has been deposited during a state fiscal biennium into the horse industry escrow account, the comptroller must deposit the amounts of the proceeds from the sales and use taxes imposed on the horse-related goods and other taxable expenditures directly related to horse ownership, riding, or boarding into the general revenue fund for the remainder of that fiscal biennium. Additionally, the existing law provisions of the Texas Racing Act provide that the balance of the horse industry escrow account must not exceed \$50 million. The bill amends the Texas Racing Act to exclude the amount of casino gaming tax revenue deposited to the horse industry escrow account from the calculations made by the comptroller with respect to the required transfers of funds sourced from the sales and use taxes imposed on the horse-related goods and other taxable expenditures directly related to horse ownership, riding, or boarding. The bill also amends the Texas Racing Act to exclude the amount of casino gaming tax revenue deposited to the horse industry escrow account from the \$50-million-balance cap that existing law imposes on that escrow account.

C.S.H.B. 2843 imposes a sports wagering tax on each license holder in an amount equal to 10 percent of the license holder's gross sports wagering revenue. "Gross sports wagering revenue" means the total amount of the following, less the sum of all money paid as losses to patrons engaged in sports wagering and the amounts paid to purchase from independent financial institutions annuities to fund losses paid to patrons engaged in sports wagering:

- money received by a license holder from patrons engaged in sports wagering;
- money received by a license holder in payment for credit extended by the license holder to a patron for the purposes of sports wagering; and
- compensation received by a license holder for conducting any sports wagering in which the license holder is not a party to a wager.

That gross sports wagering revenue does not include the following:

- counterfeit money or tokens;
- cash taken in fraudulent acts perpetrated against a license holder for which the license holder is not reimbursed; or
- cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

C.S.H.B. 2843 requires the casino gaming and sports wagering taxes to be computed and paid monthly in accordance with the procedures established by gaming commission rule and allocates the revenue from the taxes to the general revenue fund, except as otherwise provided with respect to the allocation of revenue from the casino gaming tax (as explained above). The taxes are due and payable on or before the 20th day of the month following the month in which the taxes are imposed. If the amount of taxes required to be reported and paid is later determined to be greater or less than the amount actually reported and paid by the license holder, the gaming commission must, as applicable, assess and collect the additional taxes determined to be due with interest until paid or refund any overpayment, with interest, to the license holder. The bill sets the rate of interest at one percent per month from the first day of the first month following the due date of the additional taxes or the date of the overpayment of taxes, as applicable.

C.S.H.B. 2843 provides that casino gaming and sports wagering taxes that are erroneously collected may be refunded, on approval of the commission, as other claims against the state are paid. The bill authorizes a claimant to bring an action against the gaming commission on the grounds stated in a claim for the recovery of any part of the amount of the claim that has been disallowed, provided that the action is brought not later than the 90th day after the date notice of the gaming commission's action on the claim for refund is sent by mail. A claimant's failure to bring an action within the time specified constitutes a waiver of any demand against the state on account of alleged overpayments. The bill provides that a claimant may consider a claim disallowed and bring an action against the commission on the grounds set forth in the claim for the recovery of any part of the amount claimed as an overpayment if the commission fails to mail its notice of action on the claim within six months after the date the claim is filed. The bill also

provides that a claim for refund of casino gaming or sports wagering taxes that are paid in excess of the amount required to be reported and paid must be filed not later than two years after the date of overpayment.

C.S.H.B. 2843 provides that, if a casino license holder fails to make a report of the taxes, or if the executive director is not satisfied with the license holder's report of the taxes, the executive director may compute and determine the amount due based on:

- any facts contained in the report;
- an audit conducted by the executive director;
- an estimate of the amount due;
- any information in the gaming commission's possession or that may come into the executive director's possession; or
- any combination of these methods.

In making a determination, the gaming commission may offset overpayments and interest due against underpayments and interest or penalties due for the period of the audit. The bill requires the executive director to give prompt written notice of a determination of a deficiency to the casino license holder. The deadline for delivery of the notice is the second anniversary of the last day of the calendar month following the applicable reporting period in which the deficiency occurred or the second anniversary of the date the report is filed by the license holder, whichever is later, but the deadline does not apply in the case of fraud or intent to evade the payment of a tax. If the reasons for the deficiency are not apparent, the executive director must include an explanation of those reasons in the notice. If overpayments and interest exceed underpayments, penalties, and interest, the excess amount must be refunded to the casino license holder.

C.S.H.B. 2843 authorizes a casino license holder against whom a determination of deficiency is made to petition the gaming commission for a redetermination not later than the 30th day after the date notice of the determination is served. The bill sets out the required contents of the petition, providing that the petition must:

- specify the contested portions of the determination of deficiency;
- specify the grounds for redetermination; and
- state whether a hearing is requested.

The bill requires that the petition be accompanied by payment in full of the uncontested portion of the determination, including interest and penalties, and the bill establishes that if a compliant petition is not filed by the 30th day, the determination becomes final. If a compliant petition is timely filed, the gaming commission must review the determination and, if the petitioner requests, grant a hearing. The bill establishes that an order or decision of the gaming commission on a petition for redetermination is final 10 days after the date the petitioner is served. A petitioner against whom an order or decision becomes final may, not later than the 60th day after the date the decision is final, petition for judicial review in the manner provided by the Administrative Procedure Act. The gaming commission's executive director may not petition for judicial review.

C.S.H.B. 2843 requires the gaming commission to perform all functions incident to the administration, collection, enforcement, and operation of a fee or tax imposed with respect to casino gaming and sports wagering. The bill authorizes the gaming commission to adopt rules and prescribe forms for the administration, collection, and enforcement of a fee or tax and for the reporting of a fee or tax. The bill makes certain Tax Code provisions governing collection procedures, taxpayers' suits, and tax liens applicable to the administration, collection, and enforcement of the casino gaming and sports wagering taxes, except that the powers and duties assigned to the comptroller under those provisions are assigned to the gaming commission.

C.S.H.B. 2843 prohibits a political subdivision from imposing any of the following:

- a tax on the payment of a prize;

- a tax, fee, or other assessment on consideration paid to play a casino game or engage in sports wagering;
- a tax on gross casino gaming revenue or gross sports wagering revenue; or
- a tax or fee on attendance at or admission to a casino, unless specifically authorized by statute.

### *Regulation of Gambling Operations*

C.S.H.B. 2843 requires the gaming commission to adopt rules applicable to the operation of casinos as the commission finds necessary for the protection of the health, safety, morals, and general welfare of the state and for the reputation of the state's casino gaming and sports wagering industry. Casinos may operate 24 hours a day, seven days a week and a license holder may elect other hours of operation. The bill further provides the following:

- all casino gaming and sports wagering must be conducted with legal tender of the United States or with chips, tokens, or other instrumentality approved by the gaming commission for that purpose;
- a person under 21 years of age may not be employed as a gaming employee and may not play, be allowed to play, place wagers on, or collect winnings from, personally or through an agent, any casino gaming or sports wagering;
- a person may not distribute a slot machine or other gaming device or associated equipment for placement at a casino in Texas unless the machine or equipment has been approved by the gaming commission, and only a person that holds a casino license or manufacturer license may apply for approval of a slot machine or other gaming device or associated equipment;
- a casino license holder or operator license holder must keep a database of slot machine events and the gaming commission by rule must determine what constitutes a slot machine event;
- the gaming commission must immediately disable a slot machine operated by a license holder if disabling of the machine is necessary to protect public health, welfare, or safety, and the commission may disable a slot machine operated by a license holder under the following circumstances prescribed by the bill:
  - at the time a proceeding to suspend a casino license is initiated;
  - at the time the commission discovers the license holder failed to deposit money received from slot machine operations as required; or
  - at the time an act or omission occurs that, under commission rules, justifies the termination of slot machine operations to protect the integrity of gaming or the public health, welfare, or safety or to prevent financial loss to this state; and
- the gaming commission by rule must establish minimum technical standards for gaming devices and associated equipment that may be operated in Texas.

C.S.H.B. 2843 establishes certain bookkeeping and reporting requirements by providing that a casino license holder must:

- keep the license holder's books and records in a manner that clearly shows the total amount of gross casino gaming revenue, gross sports wagering revenue, and other revenues received;
- file a report of each change of the corporate officers and directors with the gaming commission;
- report to the executive director in writing a change in company employees who have been designated as key employees.

The bill establishes that commission may require that a company furnish the commission with a copy of the company's federal income tax return not later than the 30th day after the date the return is filed with the federal government. The bill provides that the books and records kept by a casino license holder relating to casino gaming or sports wagering operations are not public



records and that the publication and dissemination of the materials by the gaming commission is prohibited.

The bill requires a casino license holder to adopt an internal control system that provides for the following:

- the safeguarding of its assets and revenues, especially the recording of cash and evidences of indebtedness; and
- the provision of reliable records, accounts, and reports of transactions, operations, and events, including reports to the executive director and the gaming commission.

The bill sets out requirements for the design of the internal control system, providing that it must be designed to reasonably ensure that:

- assets are safeguarded;
- financial records are accurate and reliable;
- transactions are performed only in accordance with management's general or specific authorization;
- transactions are recorded adequately to allow proper reporting of gross casino gaming revenue, gross sports wagering revenue, fees, and taxes and to maintain accountability for assets;
- access to assets is allowed only in accordance with management's specific authorization;
- recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and
- functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel.

The bill requires a casino license holder and an applicant for a casino license to describe, in a manner approved or required by the executive director, the license holder's or applicant's administrative and accounting procedures in detail in a written system of internal control. The bill sets out requirements for the written system, providing that it must include:

- an organizational chart depicting appropriate segregation of functions and responsibilities;
- a description of the duties and responsibilities of each position shown on the organizational chart;
- a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements that a casino license holder must keep the license holder's books and records in a manner that clearly shows the total amount of gross casino gaming revenue and gross sports wagering revenue, as applicable, and other revenues received;
- a written statement signed by the license holder's chief financial officer and either the license holder or the license holder's chief executive officer attesting that the system satisfies the requirements of this section;
- if the written system is submitted by an applicant, a letter from an independent certified public accountant stating that the applicant's written system has been reviewed by the certified public accountant and complies with the requirements of this section; and
- other items the executive director may require.

The bill requires a casino license holder and applicant for a casino license to submit a copy of their written system to the executive director. The bill requires the gaming commission to adopt minimum standards for internal control procedures.

C.S.H.B. 2843 requires the gaming commission by rule to provide for the establishment of a list of persons who must be excluded or ejected from a casino, which may include a person whose presence in the casino or establishment is determined by the commission to pose a threat to the interests of the state, to licensed casino gaming or sports wagering, or to both interests. The bill provides that the gaming commission may consider the following, in making a determination of who to exclude or eject:

- any prior conviction of a crime that is a felony in Texas or under the laws of the United States or a crime involving moral turpitude or a violation of the gaming laws of a state; or
- any violation of or conspiracy to violate the subtitle of the Occupations Code added by the bill governing "Casino Gaming and Sports Wagering Regulated by Texas Gaming Commission" relating to:
  - the failure to disclose an interest in a casino for which the person must obtain a license;
  - wilful evasion of a fee or a tax;
  - a notorious or unsavory reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; or
  - a written order of a governmental agency that authorizes the exclusion or ejection of the person from a casino where casino gaming, sports wagering, or pari-mutuel wagering is conducted.

C.S.H.B. 2843 establishes that a credit instrument evidencing a gaming transaction may be enforced by legal process. The bill authorizes a license holder to accept an incomplete credit instrument that is signed by a patron and states the amount of the debt and authorizes the license holder to complete the instrument as is necessary for the instrument to be presented for payment. Otherwise a license holder may not accept a credit instrument that is incomplete. The bill authorizes a license holder to accept a credit instrument that is payable to an affiliate or complete a credit instrument in the name of an affiliate as payee if the credit instrument otherwise complies with these provisions of the bill and the records of the affiliate pertaining to the credit instrument are made available to the executive director on request. The bill establishes that any person, license holder, or agent or employee of the person or license holder who violates these provisions is subject only to the penalties provided in the bill relating to disciplinary actions. The failure of a person to comply with these provisions or gaming commission rules does not invalidate a credit instrument or affect the ability to enforce the credit instrument or the transaction that the credit instrument represents. These provisions do not prohibit the establishment of an account by a deposit of cash, recognized traveler's check, or any other instrument that is equivalent to cash.

C.S.H.B. 2843 renders void and unenforceable gambling debts not evidenced by a credit instrument and establishes that such debts do not give rise to any administrative or civil cause of action, except as otherwise provided by the bill's provisions. The bill authorizes a claim by a patron of a license holder for payment of a gambling debt not evidenced by a credit instrument to be resolved by the executive director under gaming commission rules and requires the executive director to send a copy of the executive director's ruling by first class mail to the attorneys of record and to keep an appropriate copy of the mailing. If a party is not represented by an attorney of record, the executive director must send a copy of the ruling by first class mail to the party and keep an appropriate record of the mailing. A party or attorney of record notified by mail is presumed to have been notified on the date on which the notice is mailed. The bill entitles a party aggrieved by the executive director's ruling to have the claim resolved by the gaming commission in a contested case under the Administrative Procedure Act if the party files a written complaint with the commission challenging the executive director's ruling not later than the 20th day after the date on which the party or the party's attorney of record is notified by mail.

C.S.H.B. 2843 requires a casino license holder or operator license holder to record all potential criminal violations known to the license holder and related to casino gaming or sports wagering activity in the casino. The casino license holder or operator license holder for a casino must assign each incident, without regard to materiality, a sequential number and, at a minimum, provide the following information in a permanent record prepared in accordance with gaming commission rules to ensure the integrity of the record:

- the number assigned to the incident;
- the date and time of the incident;

- the nature of the incident;
- each person involved in the incident; and
- the name of the employee or other agent of the owner or operator who investigated the incident.

C.S.H.B. 2843 requires a casino license holder or operator license holder of a casino to do the following with respect to casino security:

- continuously monitor all slot machines through the use of a closed-circuit television system that records activity for a continuous 24-hour period, retain all videotapes or other media used to store video images for not fewer than seven days, and make the tapes or media available to the gaming commission on request;
- submit for gaming commission approval a security plan and a floor plan of the area where slot machines are operated showing slot machine locations and security camera mount locations; and
- employ at least the minimum number of private security personnel the gaming commission determines is necessary to provide for the safe operation of the casino and the safety and well-being of the players.

Private security personnel must be present during all hours of operation at each casino, and an agent or employee of the gaming commission or DPS or other law enforcement personnel may be present at a casino at any time. The bill authorizes the gaming commission to adopt rules to impose additional surveillance and security requirements related to casinos and the operation of slot machines.

C.S.H.B. 2843 authorizes a casino license holder or the license holder's officer, employee, or agent to question on the premises of the license holder's casino any person who is suspected of violating the bill's provisions regulating casino gaming and sports wagering while on the casino premises. The casino license holder or the license holder's officer, employee, or agent is not criminally or civilly liable as a result of the questioning or for reporting the person suspected of the violation to the executive director or law enforcement authorities. The bill authorizes a casino license holder or the license holder's officer, employee, or agent who has reasonable cause to believe that there has been a violation in the license holder's casino by a person to take that person into custody and detain the person in the casino in a reasonable manner and for a reasonable length of time. The taking into custody and detention does not render a license holder or the license holder's officer, employee, or agent criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances. The bill specifies that a casino license holder or the license holder's officer, employee, or agent is not entitled to the immunity from liability otherwise provided unless there is displayed in a conspicuous place in the license holder's establishment a notice of the fact that the license holder or their officer, employee, or agent who has a reasonable cause to believe that a person has committed a violation may question or detain that person in the establishment. This notice must be in boldface type, clearly legible, and in substantially the form set out by the bill.

C.S.H.B. 2843 grants the gaming commission or the commission's representative, after displaying appropriate identification and credentials, the free and unrestricted right to do the following:

- enter and inspect a premises in which casino gaming or sports wagering is conducted and any premises where gaming devices, table games, or associated equipment is manufactured, sold, or distributed; and
- inspect and copy the records of a casino license holder or operator license holder of a casino pertaining to the casino gaming or sports wagering.

C.S.H.B. 2843 authorizes the gaming commission by rule to provide for the appointment of a supervisor to manage and operate a casino at the commission's direction and perform any act that a casino license holder or operator license holder is entitled to perform in the event that:

- the casino license, operator license, or other license required for operation of the casino is revoked or suspended, lapses, or is surrendered;
- a casino has been conveyed or transferred to a secured party receiver or trustee who does not hold the necessary licenses to operate the casino; or
- any other event occurs that causes the casino to cease the operation of slot machines.

The rules may allow the gaming commission to take any action or adopt any procedure necessary to operate a casino pending the licensing of a casino license applicant or operator license applicant that seeks to operate the casino on the transfer or sale of the casino. The rules may also allow the commission, if necessary to continue the casino's operation, to sell the casino to a person that holds or has applied for the licenses required to operate the casino and make appropriate distributions of the proceeds of the sale.

C.S.H.B. 2843 creates the third degree felony offense of conveyance of casino property for a person who engages in any of the following conduct during the pendency of any proceeding before the gaming commission that may result in the appointment of a supervisor or during the period of supervision:

- sells, leases, or otherwise conveys for less than full market value or pledges as security any property of a casino; or
- removes from Texas or secretes from the commission or the supervisor any property, money, books, or records of the casino, including evidences of debts owed to the casino.

#### *Prize Rules, Payment, and Redemption*

C.S.H.B. 2843 establishes that the payment of prizes is the sole and exclusive responsibility of the casino license holder or operator license holder and prohibits payment of a prize by the gaming commission or by the state except as otherwise authorized. The bill expressly does not limit the ability of a casino license holder or operator license holder to provide promotional prizes, including wide area progressive networks, in addition to prize payouts regulated by the gaming commission. The bill requires the gaming commission to enact rules consistent with these provisions governing the use and redemption of prizes and credits recorded on player account records, such as players' club cards and smart cards.

#### *Liability for Credit Awarded or Denied*

C.S.H.B. 2843 establishes that the state and the gaming commission are not liable for any gaming device malfunction or error occurring at a casino that causes credit to be wrongfully awarded or denied to players.

#### *Approval Required for Procedures and Administrative and Accounting Controls*

C.S.H.B. 2843 establishes that approval from the gaming commission or the executive director is required for all internal procedures and administrative and accounting controls of a casino license holder or operator license holder. The bill requires the gaming commission by rule to establish general accounting and auditing requirements and internal control standards for the conduct of casino gaming and sports wagering at casinos.

#### *Gaming Employee Reporting*

C.S.H.B. 2843 requires a casino or operator license holder to submit to the gaming commission on or before the 15th day of each month a gaming employee report for the casino operated by the owner or operator. For each gaming employee, the report must provide the employee's name, job

title, date of birth, and social security number. The bill makes the report confidential and prohibits disclosure of the report except under gaming commission order or in accordance with the bill's provisions.

C.S.H.B. 2843 authorizes the gaming commission to conduct criminal history background investigations of gaming employees and authorizes the commission to prohibit an employee from performing any act relating to gaming if the commission finds that an employee has:

- committed, attempted, or conspired to commit any act prohibited by the bill's provisions regulating casino gaming and sports wagering;
- concealed or refused to disclose any material fact in any gaming commission investigation;
- committed, attempted, or conspired to commit an offense involving or related to larceny or embezzlement;
- been convicted in any jurisdiction of an offense involving or relating to gambling;
- accepted employment and continued to be employed in a position for which gaming commission approval is required after commission approval was denied for a reason involving personal unsuitability or after failing to apply for approval on commission request;
- been prohibited under color of governmental authority from being present on the premises of any casino or any establishment where casino gaming, sports wagering, or pari-mutuel wagering is conducted for any reason relating to improper gambling activity or other illegal acts;
- wilfully defied any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality that sought to investigate alleged or potential crimes relating to gambling, corruption of public officials, or any organized criminal activities; or
- been convicted of any felony or any crime involving moral turpitude.

The gaming commission may prohibit an employee from performing any act relating to casino gaming or sports wagering based on a revocation or suspension of any casino gaming, sports wagering, or pari-mutuel wagering license or for any other reason the commission finds appropriate, including a refusal by a regulatory authority to issue a license for the employee to engage in or be involved with casino gaming, sports wagering, or other regulated gaming or pari-mutuel wagering in any jurisdiction.

For purposes of these provisions, "employee" includes any person connected directly with or compensated by an applicant or license holder as an agent, personal representative, consultant, or independent contractor.

#### *Indemnification, Insurance, and Bonding Requirements*

C.S.H.B. 2843 requires a license holder to indemnify and hold harmless the state, the gaming commission, and all officers and employees of the state and the gaming commission from any and all claims which may be asserted against a license holder, the gaming commission, the state, and the members, officers, employees, and authorized agents of the state or the gaming commission arising from the license holder's participation in authorized casino gaming or sports wagering. Any surety and insurance required under the bill's provisions regulating casino gaming and sports wagering may only be issued by companies or financial institutions financially rated "A-" or better as rated by AM Best Company or another rating organization designated by the gaming commission and duly licensed, admitted, and authorized to conduct business in Texas, or by other surety approved by the commission. The bill requires the gaming commission to be named as the obligee in each required surety and as an additional insured in each required insurance contract. The bill prohibits a casino license holder or operator license holder from being self-insured with regard to gaming operations in excess of \$50 million per occurrence and

requires the gaming commission by rule to establish minimum insurance coverage requirements for license holders, including:

- crime or fidelity insurance against losses caused by fraudulent or dishonest acts by an officer or employee of the license holder;
- commercial general liability insurance;
- property insurance; and
- business auto liability insurance.

#### *Problem Gambling and Addiction; Grant Program*

C.S.H.B. 2843 creates the problem gambling and addiction grant fund as an account in the general revenue fund only for use in awarding grants to provide treatment for problem gambling, gambling addiction, alcoholism, drug abuse, and other addictive behaviors and to provide funding for research related to the impact of gambling on Texas residents. An expenditure from the fund must be made in accordance with the General Appropriations Act.

C.S.H.B. 2843 requires the gaming commission to administer the grant program and authorizes research grants to include grants for determining the effectiveness of education and prevention efforts on the prevalence of pathological gambling in Texas. Public and private entities are eligible to apply for and receive grants, but a grant may be made only after open solicitation of proposals and evaluation of proposals against criteria established by gaming commission rule. The bill authorizes the gaming commission to solicit and accept grants, gifts, contributions, or bequests made for the purpose of funding the grants and to expend the money for a purpose for which the money was received.

C.S.H.B. 2843 requires the gaming commission to administer these provisions relating to the grant fund and grant program and to adopt rules establishing criteria for qualification to receive grants and other matters considered necessary by the commission for the administration of these provisions. The rules must require that each grant recipient report at least annually to the gaming commission the grantee's measurable achievement of specific outcome goals.

#### *Report on Litigation*

C.S.H.B. 2843 requires a casino license holder or operator license holder to report to the gaming commission any litigation relating to casino gaming or sports wagering operations, including a criminal proceeding, a proceeding involving an issue related to pari-mutuel activities that impact casino gaming or sports wagering operations, or a matter related to character or reputation relevant to a person's suitability. The report must be filed not later than the 30th day after the date the license holder acquires knowledge of the litigation.

#### *Report of Violations*

C.S.H.B. 2843 requires a license holder to immediately report a violation or suspected violation of the bill's provisions regulating casino gaming and sports wagering or a rule adopted thereunder by any license holder, by an employee of a license holder, or by any person on the premises of a casino, whether or not associated with the license holder.

#### *Penalties and Offenses*

C.S.H.B. 2843 requires all requisite license or other fees to be paid to the gaming commission on or before the dates provided by law for each fee. The bill requires a person failing to timely pay a fee or tax when due to pay in addition a penalty of not less than \$50 or 25 percent of the amount due, whichever is greater. The penalty may not exceed \$1,000 if the fee or tax is less than 10 days late and may not exceed \$5,000 under any circumstances. The bill requires the gaming

commission to collect the penalty in the same manner as other charges, license fees, and fines are collected.

C.S.H.B. 2843 creates a Class A misdemeanor offense for a person who wilfully fails to report, pay, or truthfully account for a fee or tax imposed under the bill's provisions regulating casino gaming and sports wagering or who wilfully attempts in any manner to evade or defeat such a fee or tax.

C.S.H.B. 2843 creates the third degree felony offense of casino gaming and sports wagering fraud for a person who knowingly engages in any of the following conduct:

- in connection with casino gaming or sports wagering:
  - alters or misrepresents the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
  - places, increases, or decreases a bet or determines the course of play after acquiring knowledge, not available to all players, of the outcome of the game or an event that affects the outcome of the game or that is the subject of the bet or aids anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent on that event or outcome;
  - places or increases a bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including past posting and pressing bets; or
  - reduces the amount wagered or cancels the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets;
- claims, collects, or takes or attempts to claim, collect, or take money or anything of value in or from a gambling game, with the intent to defraud, without having made a wager contingent on the gambling game;
- claims, collects, or takes an amount greater than the amount won from a gambling game;
- entices or induces another to go to a place where a gambling game is being conducted or operated in violation of the bill's provisions, with the intent that the other person play or participate in that gambling game; or
- manipulates, with the intent to cheat, a component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of an event that affects the outcome of the game.

C.S.H.B. 2843 creates a third degree felony offense for a person who, at a casino, uses or possesses with the intent to use a device, other than those customarily used in the conduct of gaming, to assist in projecting the outcome of the game, keeping track of the cards played, or analyzing the probability of the occurrence of an event relating to the game.

C.S.H.B. 2843 creates a third degree felony offense for a person who engages in any of the following conduct:

- knowingly uses counterfeit tokens, chips, or coins in a gambling game;
- when playing any gambling game designed to receive, be played with, or be operated by lawful U.S. tender, tokens or chips approved by the executive director, or other instrumentality approved by the gaming commission for use in the gambling game, knowingly uses a token, chip, or coin or other instrumentality other than tokens, chips, coins, or other instrumentality approved by the gaming commission and designed for the gambling game;

- knowingly has on their body or in their possession on or off the premises of a casino a device intended to be used to violate the bill's regulations on casino gaming and sports wagering, unless the person is an authorized employee of a license holder acting in furtherance of the person's employment within an establishment;
- knowingly has on their body or in their possession on or off the premises of a casino a key or device known to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of a gambling game, a drop box, or an electronic or mechanical device connected to the game or box or for removing money or other contents from the game or box, unless the person is an authorized employee of a license holder acting in furtherance of the person's employment within a casino; or
- with the intent to manufacture slugs for unauthorized use in gaming devices located at a casino, knowingly has on their body or in their possession paraphernalia for manufacturing slugs.

The bill establishes that possession of more than one of the devices, equipment, products, or materials described in the bill's provisions creating these offenses permits a rebuttable inference that the possessor intended to use them to cheat. For purposes of the offense related to possession of paraphernalia for manufacturing slugs, "paraphernalia for manufacturing slugs" means the equipment, products, and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing, or concealing a counterfeit facsimile of the chips or tokens approved by the executive director or a lawful coin of the United States, the use of which is an offense. The term includes: lead or lead alloys; molds, forms, or similar equipment capable of producing a likeness of a gaming token or U.S. coin; melting pots or other receptacles; torches; and tongs, trimming tools, or other similar equipment.

C.S.H.B. 2843 creates a state jail felony offense for a person who knowingly cheats at any gambling game. For purposes of this offense and other offenses in the bill that reference the term, "cheat" means to alter the elements of chance, method of selection, or criteria that determine the result of a game or the amount or frequency of payment in a game.

C.S.H.B. 2843 creates the Class A misdemeanor offense of possession of an unlawful gaming device for a person who possesses any slot machine or other gaming device that the person knows has been manufactured, sold, or distributed in violation of the bill's provisions regulating casino gaming and sports wagering.

C.S.H.B. 2843 creates the third degree felony offense of unlawful manufacture, sale, or distribution of gaming equipment for a person who engages in any of the following conduct:

- manufactures, sells, or distributes a gaming device or associated equipment with the intent that the device or equipment be used to violate the bill's provisions regulating casino gaming and sports wagering;
- marks, alters, or otherwise modifies any associated equipment or gaming device in a manner that affects the result of a wager by determining a win or loss or alters the normal criteria of random selection that affect the operation of a game or determine the outcome of a game; or
- instructs another person in cheating or in the use of a device for cheating at any gambling game authorized to be conducted at a casino, with the knowledge or intent that the information or use may be employed to violate the bill's provisions regulating casino gaming and sports wagering.

C.S.H.B. 2843 creates a Class A misdemeanor offense for a person who, in a license application, in a book or record required to be maintained under the bill's provisions regulating casino gaming and sports wagering or a rule adopted under those provisions, or in a report required to be submitted by those provisions or by such a rule:

- makes a statement or entry that the person knows to be false or misleading; or



- knowingly fails to maintain or make an entry the person knows is required to be maintained or made.

C.S.H.B. 2843 creates a Class A misdemeanor offense for a person who knowingly refuses to produce for inspection by the executive director a book, record, or document required to be maintained or made by the bill's provisions regulating casino gaming and sports wagering or by a rule adopted under those provisions.

C.S.H.B. 2843 creates a third degree felony offense for a person who operates, uses, or possesses a gaming device. The bill establishes the following as exceptions to the application of the offense:

- the operation, use, or possession of the gaming device is expressly authorized by law, including the transport of a gaming device to or from a casino as provided by the bill;
- a manufacturer license holder is storing a gaming device as authorized by the gaming commission for a period not to exceed 180 consecutive days or a longer period approved by the commission; or
- the gaming devices are possessed by the gaming commission for study and evaluation.

The bill establishes that these provisions do not prohibit the operation, use, or possession of equipment, machines, technological aids, or other devices allowed in connection with the play of bingo under the Bingo Enabling Act.

C.S.H.B. 2843 creates a Class C misdemeanor offense for a license holder or an employee of the license holder who intentionally or knowingly allows a person younger than 21 years of age to play a gambling game or engage in sports wagering.

C.S.H.B. 2843 creates a misdemeanor offense punishable by a maximum \$250 fine for an individual younger than 21 years of age who engages in any of the following conduct:

- plays a gambling game;
- engages in sports wagering; or
- falsely represents the individual to be 21 years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to play a gambling game or engage in sports wagering.

It is a defense to prosecution for the offense that the individual younger than 21 years of age is participating in an inspection or investigation on behalf of the gaming commission or other appropriate governmental entity for compliance purposes.

C.S.H.B. 2843 creates a Class C misdemeanor offense for a person who intentionally or knowingly plays a gambling game with public assistance funds issued to the person under Human Resources Code provisions governing financial assistance and service programs known as temporary assistance for needy families (TANF) or Human Resources Code provisions governing nutritional assistance programs, which includes the supplemental nutrition assistance program (SNAP).

C.S.H.B. 2843 creates a Class A misdemeanor offense for a person who knowingly violates, attempts to violate, or conspires to violate a provision of the bill specifying a prohibited act with respect to casino gaming and sports wagering in a manner that is not otherwise specified as an offense.

A person who is subject to prosecution for any of these offenses and a gambling offense under the Penal Code may be prosecuted for either or both offenses.

*Enforcement; Privileged and Confidential Information*

C.S.H.B. 2843 requires the executive director to conduct an appropriate investigation to do the following for purposes of enforcing the bill's provisions regulating casino gaming and sports wagering:

- determine whether there has been a violation of the provisions or of a gaming commission rule;
- determine facts, conditions, practices, or matters that the executive director considers necessary or proper to aid in the enforcement of a law or rule;
- aid in adopting rules;
- secure information as a basis for recommending legislation relating to the provisions;
- determine facts regarding whether an applicant or a license holder meets all requirements and suitability criteria to be eligible to hold a license; and
- determine whether a license holder is able to meet the license holder's financial obligations as they become due.

If after an investigation the executive director is satisfied that a license should be denied, limited, conditioned, suspended, or revoked, or that a fine should be levied, the executive director must initiate a hearing as provided by the bill.

C.S.H.B. 2843 establishes that an applicant or license holder has absolute privilege for the content of any document or communication of the applicant or license holder that is transmitted or made to the gaming commission or a commission employee or designee to comply with any law, including a commission rule, or a subpoena issued by the commission or to assist the commission or a commission employee or designee in the performance of their respective duties. Any such document or communication does not impose liability for defamation and is not a ground for recovery in any civil action by a person other than the gaming commission. If a document or communication contains information that is privileged under state law or the law of any other jurisdiction in which the document or communication is created or stored, the privilege is not waived or lost because the document or communication is disclosed to the gaming commission or a commission employee or designee. The bill further provides the following:

- the gaming commission or a commission employee or designee may not release or disclose privileged information, documents, or communications provided by an applicant or license holder and required by a lawful court order unless timely notice of the potential release or disclosure has been given to the applicant or license holder and the applicant or license holder has provided prior written consent to the release or disclosure;
- the gaming commission and the commission's employees and designees must maintain all privileged information, documents, and communications in a secure place accessible only to commission members, employees, and designees; and
- the gaming commission must adopt procedures to protect the privileged nature of information, documents, and communications provided by an applicant or license holder.

C.S.H.B. 2843 requires an application to a court for an order requiring the gaming commission or the executive director to release any information declared by law to be confidential to be made on a motion in writing delivered not later than the 10th day before the date of application to the commission, the attorney general, and all persons who may be affected by the entry of the order. Copies of the motion and all papers filed in support of the motion must be served with the notice by delivering a copy in person or by certified mail to the last known address of the person to be served.

C.S.H.B. 2843 authorizes the gaming commission to issue an emergency order for suspension, limitation, or conditioning of a license or issue an emergency order requiring a casino to keep an individual license holder from the premises of the licensed establishment or to not pay the license holder any remuneration for services or any profits, income, or accruals on the license holder's investment in the casino. An emergency order may be issued only with the approval of and under the signature of four or more commission members and only if the commission determines that any of the following grounds for such an order exist:

- a license holder has wilfully failed to report, pay, or truthfully account for a fee or tax imposed under the bill's provisions regulating casino gaming and sports wagering or wilfully attempted in any manner to evade or defeat a fee or tax payment;
- a license holder or gaming employee has cheated at a gambling game; or
- the action is necessary for the immediate preservation of the public peace, health, safety, morals, good order, or general welfare.

The emergency order must state the grounds on which it is issued, including a statement of facts constituting the alleged emergency necessitating the action, and the order is effective immediately on issuance and service on the license holder or resident agent of the license holder, gaming employee, or, in cases involving registration, on issuance and service on the person or entity involved or registered agent of the entity involved. An emergency order may suspend, limit, condition, or take other action in relation to the license of one or more persons in an operation without affecting other individual license holders or the casino. An emergency order remains effective until further order of the gaming commission or final disposition of the case. Not later than the fifth day after the date of issuance of an emergency order, the executive director must file a complaint and serve it on the person or entity involved, who is entitled to a hearing before the gaming commission and to judicial review of the decision and order of the commission under the Administrative Procedure Act. Judicial review is under the substantial evidence rule, as provided by that act.

C.S.H.B. 2843 authorizes the gaming commission to suspend or revoke a license if the holder of the license at any time fails to meet the eligibility requirements set forth by the bill. Failure to timely remit gaming revenue generated by slot machines to the gaming commission or any tax or other fee owed to the state as demonstrated by report from the applicable taxing authority or to timely file any report or information required as a condition of any license issued under the bill's provisions regulating casino gaming and sports wagering may be grounds for suspension or revocation, or both, of an issued license.

C.S.H.B. 2843 requires the gaming commission, before denying an application, suspending or revoking a license, or imposing a fine for a violation, to provide written notice to the applicant or license holder of the denial, the suspension and suspension period, the revocation, or the amount of the fine. The bill requires that the notice must include the following:

- the effective date of the denial, suspension, revocation, or the fine, as applicable;
- each reason for the denial, suspension, revocation, or fine;
- an explanation of the evidence supporting the reasons;
- a statement explaining that the applicant or license holder is entitled to an opportunity to present the applicant's or license holder's position in response to the notice, on or before the 15th day after the date the notice is delivered personally or mailed to the applicant or license holder; and
- a statement explaining the person's right to an administrative hearing to determine whether the denial, suspension, revocation, or fine is warranted.

The bill requires notice to be made by personal delivery or by mail to the person's mailing address as it appears in the gaming commission's records. To obtain an administrative hearing on a denial, suspension, revocation, or fine, a person must submit a written request for a hearing to the gaming commission not later than the 20th day after the date notice is delivered personally or mailed to the person, as applicable. If the gaming commission receives a timely request, the commission must provide the person with an opportunity for a hearing as soon as practicable. However, if the gaming commission does not receive a timely request, the commission may impose the fine, deny the application, or suspend or revoke the license or sustain the denial, suspension, or revocation without a hearing.

C.S.H.B. 2843 requires that a requested hearing be held not earlier than the 11th day after the date the written request is submitted to the gaming commission. A hearing may be held before that 11th day if the commission and the hearing requestor agree to an earlier date. However, the

bill authorizes the gaming commission to provide that a revocation or suspension takes effect on receipt by the applicant or license holder of the written notice if the commission finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare and sets out the following procedures for a hearing on such a revocation or suspension:

- the hearing must be held not earlier than the ninth day after the date the written request is submitted to the commission and not later than the 14th day after the date the commission receives the request, unless the commission and the hearing requestor agree to an earlier or later date, respectively;
- the revocation or suspension continues in effect until the hearing is completed; and
- if the hearing is continued, the revocation or suspension remains in effect during the continuance at the request of the hearing requestor or on a finding of good cause by the gaming commission or administrative law judge.

The bill requires the gaming commission by rule to establish a nonexclusive list of violations that present a threat to the public health, safety, or welfare.

C.S.H.B. 2843 establishes that, to prevail in an administrative hearing, the hearing requestor must demonstrate by clear and convincing evidence that the denial, suspension, revocation, or imposition of a fine was unwarranted or otherwise unlawful. The post-deprivation hearing may be conducted by the gaming commission or referred to the State Office of Administrative Hearings (SOAH). The administrative record created by the hearing conducted by SOAH must be provided to the gaming commission for review and determination. If an administrative law judge of SOAH conducts a hearing and the proposal for decision supports the gaming commission's position, the administrative law judge must include in the proposal a finding of the costs, fees, expenses, and reasonable and necessary attorney's fees the state incurred in bringing the proceeding. The bill authorizes the gaming commission to adopt the findings for costs, fees, and expenses and make the finding a part of the final order entered in the proceeding. Proceeds collected from a finding must be paid to the gaming commission.

C.S.H.B. 2843 authorizes a person to obtain judicial review before a district court in Travis County if the person is aggrieved by a final decision of the gaming commission to deny, suspend, or revoke a license or to impose any fine. The bill waives the state's sovereign immunity from suit and from liability for the limited purpose of allowing a person to obtain judicial review. The bill provides the following regarding such judicial review:

- the judicial review must be instituted by serving on the gaming commission and filing a petition not later than the 20th day after the effective date of the final decision and must identify the order appealed from and the grounds or reason why the petitioner contends the decision of the commission should be reversed or modified;
- the review must be conducted by the court sitting without jury, and must not be a trial de novo but is confined to the record on review;
- the reviewing court may only affirm the decision, remand the case for further proceedings, or reverse the decision if the substantial rights of the petitioner have been violated;
- if any court of competent jurisdiction, on judicial review limited to the administrative record before the gaming commission and subject to the substantial evidence standard, concludes that the denial of the issuance of the license was unwarranted or otherwise unlawful, the sole remedy available is invalidation of the gaming commission's final decision and remand to the commission for reconsideration of the application;
- if the court concludes on that administrative record and subject to that substantial evidence standard that the suspension, revocation, or fine was unwarranted or otherwise unlawful, the sole remedy available is reinstatement of the license or invalidation of the fine, as applicable; and
- the gaming commission, the state, or the members, officers, employees, and authorized agents of the commission or the state are not subject to monetary damages, attorney's

fees, or court costs resulting from a fine imposed or from the denial, suspension, or revocation of a license.

C.S.H.B. 2843 establishes that, if a person denied a license has previously been issued a temporary license, the temporary license expires immediately on the issuance of the denial. Except as otherwise authorized by the gaming commission, a person denied a license may not reapply for any license before the second anniversary of the date of the denial.

C.S.H.B. 2843 establishes that a license holder, by virtue of accepting the license, agrees that the privilege of holding the license is conditioned on the license holder's agreement to certain enforcement provisions prescribed by the bill regarding suspension or revocation of licenses, license hearings and disciplinary hearings, and judicial review of denial, suspension, revocation, or fine imposition decisions and that the license holder waives any right to challenge or otherwise appeal the enforceability of those provisions.

#### *Immunity for Statement Made in Proceeding or Investigation*

C.S.H.B. 2843 establishes that any member or agent of the gaming commission or any witness testifying under oath has absolute privilege for any written or oral statement made in the course of, and relevant to the purpose of, an official commission proceeding or investigative activity related to commission licensing and that such written or oral statement does not impose liability for defamation or constitute a ground for recovery in any civil action.

#### *Exemption from Federal Statute*

C.S.H.B. 2843 establishes that the bill's provisions regulating casino gaming and sports wagering provide an exemption to the application of a federal law relating to the unlawful transportation of gambling devices, in accordance with that law. All shipments of gaming devices into Texas, including slot machines, conducted in compliance with the applicable provisions of federal law relating to the registration of manufacturers and dealers and the labeling and marking of shipping packages are legal shipments of the devices into Texas.

#### *Construction; Applicability of Other Laws*

C.S.H.B. 2843 establishes that its provisions legalizing and regulating casino gaming and sports wagering may not be construed to implicitly repeal or modify existing state laws with respect to gambling, except that casino gaming and sports wagering are not prohibited by another law if conducted as authorized under the bill. Those bill provisions prevail to the extent of any conflict with the Texas Racing Act and, to the extent of conflict between any of those bill provisions, or a related gaming commission rule, and certain Government Code provisions relating to SOAH, the bill provision or the commission rule prevails in all matters related to casino gaming or sports wagering, including in connection with hearings before SOAH.

#### Tribal Gaming Agreements

C.S.H.B. 2843 requires the governor to execute, on behalf of the state, with a federally recognized Indian tribe with Indian lands in Texas a gaming agreement consistent with applicable federal law not later than the 180th day after the date the governor receives a request from the tribe, accompanied by or in the form of a duly enacted resolution of the tribe's governing body, to enter into the gaming agreement. The bill sets out the form and contents of a model tribal gaming agreement and requires a gaming agreement executed by the governor under the bill's requirement that he execute a gaming agreement to be in the form of, and contain all the terms of, the model agreement. The bill establishes that the model agreement is state law and that

the operation of gaming authorized under the agreement is expressly authorized as a matter of state law for any Indian tribe entering into the agreement in accordance with the bill.

The model tribal gaming agreement includes the following provisions:

- that the agreement is made and entered into by and between the named federally recognized Indian tribe and the state, with respect to gaming on the named tribe's Indian lands;
- that the agreement governs gambling on Indian lands held in trust by the United States on January 1, 1998, for the named tribe;
- that, pursuant to express provisions of the federal Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act addressing jurisdiction, the named tribe may engage in any gaming activities on Indian lands that another person may be authorized to engage in within Texas under the bill's provisions;
- that the named tribe shall regulate the gaming activities authorized under the agreement on the named tribe's Indian lands;
- that the named tribe shall adopt rules and procedures substantially similar to the requirements of the bill's provisions, except that any regulatory oversight established under those provisions for gaming conducted under a license shall be exercised by the named tribe for gaming conducted under the agreement; and
- that the named tribe may adopt its rules and procedures by reference to any of the bill's provisions governing casino gaming and sports wagering regulated by the gaming commission.

The bill prohibits a gaming agreement between the state and a federally recognized Indian tribe that is not subject to the federal Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, when using the form of the model agreement, from including the provision related to that federal act.

C.S.H.B. 2843 establishes that the bill's provisions regarding tribal gaming agreements do not limit the ability of a federally recognized Indian tribe to request that a gaming agreement be negotiated with the state on terms that are different from those set forth in the model agreement or the ability of the state to engage in negotiations and to reach agreement under any applicable federal law. In offering to enter into a gaming agreement with Indian tribes in Texas under the terms of the model agreement, and excluding assessments, authorized under the federal Indian Gaming Regulatory Act, by the state of the amounts necessary to defray state costs of regulating activities as provided under the gaming agreement, nothing in the bill's provisions regarding such agreements may be construed to mean that:

- the state is imposing any tax, fee, charge, or other assessment on an Indian tribe or on any other person or entity authorized by an Indian tribe as a condition to engaging in a Class III activity as defined in the federal Indian Gaming Regulatory Act; or
- the state is refusing to enter into gaming agreement negotiations based on the lack of authority of the state or a political subdivision to impose the tax, fee, charge, or other assessment.

If any federally recognized Indian tribe with jurisdiction over Indian lands in Texas requests that the governor enter into negotiations for a gaming agreement under federal law applicable to the tribe, including the federal Indian Gaming Regulatory Act, on terms different from those prescribed in the model agreement, the governor must enter into those negotiations under the federal law applicable to the tribe and without preconditions and may reach agreement and execute the agreement on behalf of the state.

C.S.H.B. 2843 requires the governor to execute any documents necessary to implement a tribal gaming agreement and restricts the use of any money received by the gaming commission under a gaming agreement for regulatory costs incurred relative to tribal gaming operations to defraying the commission's expenses incurred in the oversight, compliance with, and enforcement of gaming operations conducted pursuant to a gaming agreement.

C.S.H.B. 2843 authorizes the attorney general to petition a court for appropriate injunctive relief to restrain a violation of the bill's provisions regarding tribal gaming agreements that the gaming commission, the appropriate governing body for an Indian tribe, or the attorney general has reason to believe has occurred or is about to occur. Filing of the petition does not waive applicable sovereign immunity. Venue for an action by the state seeking injunctive relief is in a district court in Travis County. If the court finds that the bill provisions regarding tribal gaming agreements have been knowingly violated, the court must order all proceeds from any illegal casino gaming or sports wagering to be forfeited to the appropriate governing body as a civil penalty. The bill establishes that the remedies provided under these provisions are not exclusive and authorizes the gaming commission to suspend or revoke a license, impose an administrative penalty, or seek injunctive or civil penalties or both, depending on the severity of the violation.

#### Limited Waiver of Sovereign Immunity; No Liability of State for Enforcement

C.S.H.B. 2843 establishes that the only waiver of sovereign immunity relative to gaming operations is provided by these following provisions of the bill. The bill establishes that, except as expressly provided by the Texas Constitution, the state does not waive its sovereign immunity by negotiating gaming agreements with Indian tribes or other persons for the operation of casino gaming, sports wagering, or gambling games under the bill's provisions. An actor or agent for the state may not waive the state's sovereign immunity absent an express legislative grant of that authority.

C.S.H.B. 2843 establishes the following with regard to gaming operations on Indian lands:

- the state consents to the jurisdiction of the U.S. District Court with jurisdiction in the county where the Indian lands are located, or if the federal court lacks jurisdiction, to the jurisdiction of a district court in Travis County, solely for the purpose of resolving disputes arising from a gaming agreement authorized under the bill for declaratory or injunctive relief or contract damages of \$100,000 or more or from the failure of the state to enter into a gaming agreement as required by the bill; and
- any disputes relating to damages or other awards valued at less than \$100,000 must be arbitrated under the rules of the American Arbitration Association, provided, however, that application of the rules may not be construed as a waiver of sovereign immunity.

All financial obligations of the gaming commission are payable solely out of the income, revenues, and receipts of the commission and are subject to statutory restrictions and appropriations. The state and the gaming commission are not liable if performance by the commission is compromised or terminated by acts or omissions of the legislature or the state or federal judiciary, and the state and the gaming commission are also not liable for acts or omissions related to the enforcement of applicable bill provisions.

#### Administrative Provisions

##### *Office of Hearing Examiners*

C.S.H.B. 2843 requires the gaming commission to create an office of hearing examiners to assist the commission in carrying out its powers and duties. The office must hold hearings under the authority of the gaming commission on matters relating to the commission's administration of laws related to casino gaming, sports wagering, or gambling regulated by the commission as the commission orders and report after a hearing in the manner prescribed by the commission. The bill requires the gaming commission to refer any contested case arising under such laws to the office or to SOAH. The office, which is under the direction of a chief hearing examiner appointed by the gaming commission, is independent of the executive director and is under the exclusive control of the commission. The bill sets out additional provisions relating to the administration and operation of the office, as follows:

- the gaming commission may authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold any hearing called by the chief hearing examiner;
- the chief hearing examiner and each assistant hearing examiner employed by the office must be an attorney licensed to practice law in Texas;
- the chief hearing examiner and each assistant hearing examiner may administer oaths, receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of papers and documents in all matters delegated to the office by the commission;
- the chief hearing examiner and each assistant hearing examiner is entitled to an annual salary and other compensation specified by the commission; and
- the office may contract for additional services it considers necessary to carry out its powers.

### *Judicial Review*

C.S.H.B. 2843 subjects a final decision of the gaming commission in a contested case to judicial review under the Administrative Procedure Act and establishes that this judicial review is under the substantial evidence rule, as provided by that act.

### *Records; Confidential Information*

C.S.H.B. 2843 requires the executive director to maintain a file of all license applications together with a record of all action taken with respect to the applications. The bill authorizes the gaming commission and the executive director to maintain other records considered desirable. The bill makes the following information confidential and prohibits disclosure of the information, with certain exceptions:

- information requested by the gaming commission or the executive director under an applicable law that may otherwise be obtained relating to the finances, earnings, or revenue of an applicant or license holder;
- information pertaining to an applicant's criminal history record information, antecedents, and background that has been furnished to or obtained by the gaming commission or the executive director from any source;
- information provided to the gaming commission, the executive director, or a commission employee by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential;
- information obtained by the executive director or the gaming commission from a license holder, including a casino service license holder, relating to the manufacturing, modification, or repair of gaming devices;
- security plans and procedures of the gaming commission designed to ensure the integrity and security of the regulation and operation of casino gaming, sports wagering, or other gambling regulated by the commission;
- the street address and telephone number of a patron unless the patron has consented to the release of the information;
- information relating to all system operations of casino gaming and sports wagering, including security related to casino gaming or sports wagering, and commission plans and procedures intended to ensure the integrity and security of the operation of casino gaming, sports wagering, and other gambling regulated by the commission; and
- reports on litigation and related information filed with the gaming commission under the bill's provision that requires a casino license holder or operator license holder to report any litigation relating to casino gaming or sports wagering operations.



C.S.H.B. 2843 provides that the information made confidential may be disclosed, wholly or partly, only as follows:

- in the course of the necessary administration of the bill's provisions authorizing and regulating casino gaming and sports wagering or in the enforcement of other laws related to casino gaming, sports wagering, or other gambling regulated by the gaming commission;
- under the bill's procedure for the release of confidential information on application to a court for an order requiring the release;
- on the order of a court; or
- as authorized under gaming commission rule, to an authorized agent of any agency of the United States, another state, or a political subdivision in Texas.

Notice of the content of any confidential information that is furnished or released may be given to any affected applicant or license holder as prescribed by gaming commission rule.

#### *Representation by Attorney General*

C.S.H.B. 2843 requires the attorney general to represent the gaming commission and the executive director in any proceeding to which the commission or the executive director is a party under a law administered by the commission or in any suit filed against the commission or executive director. The Office of the Attorney General on request must advise the gaming commission and the executive director in all other matters, including representing the commission when the commission acts in its official capacity.

#### *Gaming Commission Rulemaking*

C.S.H.B. 2843 requires the gaming commission to adopt rules the commission considers necessary or desirable for the public interest in carrying out the policy and provisions of laws administered by the commission. The rules must specifically prescribe the following:

- the method and form of applying for a license and for the gaming commission's consideration of an application;
- any notice required to apply for a license;
- the information an applicant or license holder must provide concerning antecedents, habits, character, associates, criminal history record information, business activities, and financial affairs;
- the criteria the gaming commission will use in awarding, revoking, and suspending licenses;
- the information a license holder must provide relating to the holder's employees;
- the manner of and procedures for hearings conducted by the gaming commission or a hearing examiner of the commission;
- the payment of fees or costs by an applicant or license holder;
- the procedures for issuance of temporary licenses and temporary qualifications to hold equity interests in a casino license holder;
- the manner and method of collecting and paying fees and of issuing licenses;
- the conditions under which the nonpayment of a gambling debt by a license holder constitutes grounds for disciplinary action;
- the manner of approval of casino games, slot machines, gaming devices, and associated equipment;
- access to confidential information obtained under the law and the means to ensure that the confidentiality of the information is maintained and protected;
- financial reporting and internal control requirements for license holders;
- the manner of computing and reporting money awarded to players, compensation from casino gaming and sports wagering, and gross casino gaming revenue and gross sports wagering revenue;

- the requirements for the annual audit of the financial statements of a license holder;
- the requirements for periodic financial reports from each license holder consistent with standards and intervals prescribed by the gaming commission;
- the procedures to be followed by a license holder for excluding a person from a casino;
- the procedures and criteria for requiring a finding of suitability under the bill's provision that authorizes the gaming commission to require a finding of suitability for any person conducting business with or in relation to the operation of casino gaming or sports wagering who is not otherwise required to obtain a license from the commission; and
- the procedures and criteria for exempting a group or class of persons from the registration or qualification requirements.

C.S.H.B. 2843 requires the gaming commission also to adopt rules necessary to comply with statutory provisions establishing the consequences of criminal conviction on occupational licensure. In adopting these rules, the gaming commission must list the specific offenses for which a conviction would constitute grounds for the commission to revoke, suspend, or deny a license under certain of those statutory provisions.

C.S.H.B. 2843 prohibits the gaming commission from adopting rules restricting advertising or competitive bidding by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by that person. The gaming commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that does any of the following:

- restricts the use of any advertising medium;
- restricts the person's personal appearance or the use of the person's voice in an advertisement;
- relates to the size or duration of an advertisement by the person; or
- restricts the use of a trade name in advertising by the person.

#### *Subpoena Powers*

C.S.H.B. 2843 authorizes the gaming commission to request and, if necessary, compel by subpoena the attendance of a witness for examination under oath and the production for inspection and copying of records and other evidence relevant to the investigation of an alleged violation of a law related to casino gaming, sports wagering, or other gambling regulated by the commission. If a person fails to comply with a subpoena, the gaming commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held. The court must order a person to comply with the subpoena if the court determines that good cause exists for issuing the subpoena.

#### *Contract Authority*

C.S.H.B. 2843 grants the gaming commission and executive director broad authority over, and requires them to exercise strict control and close supervision over, casino gaming and sports wagering conducted in Texas to promote and ensure integrity, security, honesty, and fairness in the operation and administration of casino gaming and sports wagering. The bill authorizes the executive director to contract with a third party to perform a function, activity, or service in connection with the operation of casino gaming or sports wagering, other than investigative services, as prescribed by the executive director. A contract relating to the operation of casino gaming or sports wagering must be consistent with the bill's provisions. The bill authorizes the executive director to award a contract for supplies, equipment, or services, pending the completion of any investigation and licensure, but such a contract must include a provision permitting the executive director to terminate the contract without penalty if the investigation reveals that the person to whom the contract is awarded does not satisfy the applicable

requirements for a license. The bill requires the gaming commission, in the acquisition or provision of facilities, supplies, equipment, materials, or services related to the implementation of casino gaming or sports wagering, to comply with procurement procedures prescribed under the State Purchasing and General Services Act.

### *Investigations and Enforcement*

C.S.H.B. 2843 authorizes a violation or alleged violation of the provisions related to casino gaming and sports wagering regulated by the gaming commission added to the Occupations Code by the bill or of the state's penal laws by the gaming commission, its employees, or a person regulated under those bill provisions to be investigated by the attorney general; the Travis County district attorney; or a district attorney, criminal district attorney, or county attorney for the county in which the violation or alleged violation occurred. The bill authorizes the gaming commission to investigate violations of laws or rules related to casino gaming, sports wagering, or other gambling regulated by the commission and to file a complaint requesting that an investigation be conducted by the attorney general or an applicable district or county attorney.

### *Security*

C.S.H.B. 2843 requires the executive director to maintain a department of security in the gaming commission and to appoint a deputy to administer the department. The deputy must be qualified by training and experience in law enforcement or security to supervise, direct, and administer the department's activities. The bill authorizes the executive director to employ security officers or investigators as the executive director considers necessary and to commission investigators or security officers as peace officers. The deputy and all investigators employed by the department and commissioned as peace officers must meet the requirements under applicable state law for employment and commission as peace officers. The bill authorizes a security officer or investigator employed by the department and commissioned as a peace officer, or a peace officer who is working in conjunction with the gaming commission or DPS in the enforcement of the bill's provisions authorizing and regulating casino gaming and sports wagering, to take the following actions:

- without a search warrant, search and seize a gaming device or associated equipment that is located on premises for which a person holds a license; or
- seize a gaming device or associated equipment that is being used or is in the possession of any person in violation of laws related to casino gaming, sports wagering, or other gambling regulated by the commission.

The bill requires DPS or any other state or local law enforcement agency, at the gaming commission's request and in accordance with an interagency agreement, to perform a full criminal history record information and background investigation of a prospective deputy or investigator of the department of security. The gaming commission must reimburse the agency for the actual costs of an investigation. The bill requires the executive director, at least once every two years, to employ an independent firm that is experienced in security, including computer security and systems security, to conduct a comprehensive study of all aspects of casino gaming and sports wagering security.

### *DPS Records*

C.S.H.B. 2843 makes all files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters collected, retained, or compiled by DPS in the discharge of its duties under the bill's provisions authorizing and regulating casino gaming and sports wagering confidential and exempt from public disclosure, except as otherwise provided by the bill. The bill establishes that an investigation report or other document submitted by DPS to the gaming commission becomes part of the commission's

investigative files. The bill also establishes that information that is made available to the public is not privileged or confidential under these provisions and is subject to public disclosure.

#### *Criminal Background Investigation for Casino Gaming or Sports Wagering*

C.S.H.B. 2843 entitles the gaming commission to conduct an investigation of and to obtain criminal history record information maintained by DPS, the FBI Identification Division, or another law enforcement agency to assist in the criminal background investigation of any person directly involved with casino gaming, sports wagering, or other gambling regulated by the commission. The bill establishes that a criminal background investigation is governed by gaming commission rules, except as otherwise provided by the bill. DPS or a state or local law enforcement agency in Texas, in accordance with an interagency agreement with the gaming commission, must provide any assistance requested by the commission in the administration and enforcement of the bill's provisions authorizing and regulating casino gaming and sports wagering. These provisions do not limit the gaming commission's right to obtain criminal history record information from any other local, state, or federal agency, and the bill authorizes the gaming commission to enter into a confidentiality agreement with the agency as necessary and proper. The bill establishes that criminal history record information obtained by the gaming commission under these provisions may be disclosed only under a court order or to another law enforcement agency to assist in or further an investigation related to the gaming commission's operation and oversight of gaming, except as otherwise provided by the bill or other law.

#### *Player Agreement to Abide by Rules and Instructions*

C.S.H.B. 2843 establishes that, by participating as a player, a player agrees to abide by and be bound by the gaming commission's and the license holder's rules and instructions, including those applicable to the particular casino game or sports wagering involved. The bill establishes that the player also agrees that the determination of whether the player is a valid winner is subject to:

- the gaming commission's and the license holder's rules, instructions, and claims procedures, including those developed for the particular casino game or sports wagering involved;
- any validation tests established by the gaming commission for the particular casino game or sports wagering involved; and
- the limitations and other provisions prescribed by the bill's provisions authorizing and regulating casino gaming and sports wagering.

#### *Venue for Criminal Proceeding*

C.S.H.B. 2843 establishes that venue is proper in Travis County or any county in which venue is proper under Chapter 13 of the Code of Criminal Procedure for the following offenses:

- an offense under the bill's provisions authorizing and regulating casino gaming and sports wagering;
- an offense under the Penal Code, if the accused is regulated under those bill provisions and is alleged to have committed the offense while engaged in casino gaming or sports wagering activities; or
- an offense against property or an organized crime offense that involves property consisting of or including a gaming device or casino game prize.

#### Texas Gaming Commission Legislative Oversight Committee

C.S.H.B. 2843 creates the Texas Gaming Commission Legislative Oversight Committee to facilitate the creation of the gaming commission and the assignment of the commission's powers,

duties, functions, programs, and activities. The committee is composed of the following seven members, who serve at the pleasure of the appointing official:

- two members of the senate appointed by the lieutenant governor;
- two members of the house of representatives appointed by the speaker of the house; and
- three members of the public appointed by the governor.

The bill requires appointments to be made not later than December 1, 2023, and assigns the executive director of the gaming commission as an additional ex officio member of the committee. The bill provides for the lieutenant governor and the speaker of the house to alternate designating a presiding officer from among their respective appointments, and the bill provides for the speaker of the house to make the first designation. The bill establishes the entitlement of committee members to reimbursement for qualifying travel expenses as provided by the General Appropriations Act. A committee member may not receive compensation for their service on the committee. The bill makes state open meetings law applicable to the committee.

C.S.H.B. 2843 requires the committee to do the following:

- facilitate the assignment of the gaming commission's powers, duties, functions, programs, and activities;
- adopt an initial training program to meet the requirements set out by the bill to train the initial appointees of the gaming commission;
- with assistance from the gaming commission, advise the executive director and commission members concerning the powers, duties, functions, programs, and activities established under the bill and the related funds and obligations;
- meet at the call of the presiding officer;
- research, take public testimony, and issue reports on other appropriate issues or specific issues requested by the lieutenant governor, speaker, or governor; and
- review specific recommendations for legislation proposed by the gaming commission or the other agencies.

The committee may request reports and other information from the gaming commission, other state agencies, and the attorney general relating to casino gaming and sports wagering in Texas and other appropriate issues. The bill requires the committee to use existing staff of the senate, the house of representatives, and the Texas Legislative Council to assist the committee in performing its duties.

C.S.H.B. 2843 requires the committee to report the following to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year:

- identification of significant issues within casino gaming and sports wagering regulation, with recommendations for action;
- an analysis of the effectiveness and efficiency of casino gaming and sports wagering regulation, with recommendations for any necessary research; and
- recommendations for legislative action.

#### Gaming Commission Work Plan

C.S.H.B. 2843 requires the assignment of the gaming commission's powers, duties, functions, programs, and activities to be accomplished in accordance with a schedule included in a work plan developed by the executive director and commission members and submitted to the governor and the Legislative Budget Board (LBB) not later than September 1, 2024. The executive director and commission members must provide to the governor and the LBB work plan status reports and updates on at least a quarterly basis following submission of the initial work plan. The bill requires the work plan to be made available to the public.

C.S.H.B. 2843 requires the gaming commission, not later than June 1, 2024, to hold a public hearing and accept public comment regarding the work plan and requires the executive director and commission members, in developing the work plan, to hold public hearings in various geographic areas in Texas before submitting the plan. The bill requires the gaming commission to implement the powers, duties, functions, programs, and activities assigned to it under the bill in accordance with a work plan designed by the commission to ensure the implementation of gaming regulation is accomplished in a careful and deliberative manner. The bill sets out required contents of the work plan for each of these four phases, as follows:

- a planning phase, during which the gaming commission will focus on and stabilize the organization of the agency's powers, duties, functions, programs, and activities, and which must include:
  - initiation of recommendations made by the Texas Gaming Commission Legislative Oversight Committee;
  - creation of interagency and intra-agency steering committees;
  - development of global visions, goals, and organizational strategies; and
  - development of communications and risk management plans;
- an integration phase, during which the gaming commission will identify opportunities and problems and design customized solutions for those problems, and which must include:
  - identification of key issues related to costs or legal requirements for other commission activities;
  - planning for daily operations; and
  - validation of fiscal and program synergies;
- an optimization phase, during which the gaming commission will complete and expand on the initial transitions, and which must include:
  - optimization of initial implementation initiatives;
  - use of enterprise teaming operations;
  - building infrastructures to support and facilitate changes in gaming regulation and oversight; and
  - identification and use of beneficial assets management and facilities approaches; and
- a transformation phase, during which the gaming commission will continue implementing initial and additional changes in gaming regulation and oversight, and which must include implementation of changes in agency management activities.

### Public Participation and Complaint Procedures

#### *Public Interest Information*

C.S.H.B. 2843 requires the gaming commission to prepare and disseminate consumer information that describes its regulatory functions and the procedures by which consumer complaints are filed with and resolved by the commission. The gaming commission must make the information available to the public and appropriate state agencies.

#### *Complaints*

C.S.H.B. 2843 requires the gaming commission by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, telephone number, and other contact information of the commission for the purpose of directing complaints to the commission. The bill sets out the following means by which that notice may be provided:

- on each form, application, or written contract for services of a person regulated under a law administered by the commission;
- on a sign prominently displayed in the place of business of each person regulated under a law administered by the commission; or

- in a bill for service provided by a person regulated under the bill's provisions authorizing and regulating casino gaming and sports wagering.

The bill requires the gaming commission to list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a person regulated under the bill's provisions authorizing and regulating casino gaming and sports wagering.

### *Records of Complaints*

C.S.H.B. 2843 requires the gaming commission to maintain a system to promptly and efficiently act on complaints filed with the commission. The bill requires the gaming commission to maintain information about the parties to the complaint and the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and information about the disposition of the complaint. The gaming commission must make information available describing its procedures for complaint investigation and resolution and must periodically notify the parties of the status of the complaint until final disposition of the complaint.

### *General Rules Regarding Complaint Investigation and Disposition*

C.S.H.B. 2843 requires the gaming commission to adopt rules concerning the investigation of a complaint filed with the commission. The rules must do the following:

- distinguish between categories of complaints;
- ensure that complaints are not dismissed without appropriate consideration;
- require that the gaming commission be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- ensure that the person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the commission to obtain the services of a private investigator.

### *Disposition of Complaint*

C.S.H.B. 2843 requires the gaming commission to dispose of each complaint in a timely manner and establish a schedule for conducting each phase of a complaint that is under the control of the commission not later than the 30th day after the date the commission receives the complaint. Each party must be notified of the projected time requirements for pursuing the complaint, and the gaming commission must notify each party to the complaint of any change in the schedule not later than the seventh day after the date the change is made. The bill requires the executive director to notify the gaming commission of a complaint that is not resolved within the time prescribed by the commission for resolving the complaint.

### *Public Participation*

C.S.H.B. 2843 requires the gaming commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction. The gaming commission must prepare and maintain a written plan that describes the manner in which a person who does not speak English may be provided reasonable access to the commission's programs.

### *Informal Settlement Conference*

C.S.H.B. 2843 requires the gaming commission by rule to establish procedures for an informal settlement conference related to a complaint filed with the commission.

### Definitions

C.S.H.B. 2843 defines the following terms, among others:

- "applicant" means a person who submits an application for a casino license, an operator license, an occupational license, a manufacturer license, a casino service license, or a qualification to hold an equity interest in a casino license holder;
- "associated equipment" means any equipment used in connection with casino gaming or sports wagering, including a mechanical, electromechanical, or electronic contrivance, component, or machine that would not otherwise be classified as a gaming device, and the term specifically includes dice, playing cards, links connecting progressive slot machines, equipment affecting the proper reporting of gross casino gaming revenue or gross sports wagering revenue, computerized systems of betting for sports wagering, computerized systems or software for monitoring slot machines, and devices for weighing or counting money;
- "casino" means facilities within a destination resort at which casino gaming or sports wagering is conducted for profit, as authorized by the bill's provisions;
- "casino service" means the provision of goods or services, including security service and gaming schools, to a person holding a casino license or operator license, other than a service requiring a manufacturer license;
- "commission" means the Texas Gaming Commission;
- "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company, or other form of business organization, excluding a sole proprietorship or natural person;
- "credit instrument" means a writing that evidences a casino gaming debt or sports wagering debt owed to a casino license holder at the time the debt is created, including any writing accepted in consolidation, redemption, or payment of a prior instrument;
- "destination resort" means a mixed-use development consisting of casino gaming facilities and a combination of various tourism amenities and facilities, including hotels, restaurants, meeting facilities, attractions, entertainment facilities, and shopping centers, and "mixed-use development" means a developed area of land;
- "equity interest" means a proprietary interest, right, or claim allowing the holder to vote on matters of organizational governance or participate in the profits and residual assets of a company, including common and preferred stock in a corporation, a general or limited partnership interest in a partnership, a similar interest in any other form of business organization, and a warrant, right, or similar interest to subscribe for a proprietary right or claim or that is convertible into a proprietary right or claim, with or without the payment of additional consideration;
- "executive director" means the executive director of the gaming commission;
- "gaming agreement" means an agreement authorized under the bill's provisions between the state and a federally recognized Indian tribe with Indian lands in Texas under which the state allows the tribe to conduct limited casino gaming activities authorized under the bill's provisions or applicable federal law;
- "gaming device" means a mechanical, electromechanical, or electronic contrivance, component, or machine, including a slot machine, used in connection with casino gaming or sports wagering that affects the result of a bet by determining win or loss and includes a system for processing information that can alter the normal criteria of random selection, affect the operation of a game, or determine the outcome of a game;
- "gaming-related business" means any business engaged in the service or support of casino gaming or sports wagering activities regulated under gaming commission rule or the bill's provisions authorizing and regulating casino gaming and sports wagering;



- "hearing examiner" means a person authorized by the gaming commission to conduct hearings;
- "internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet;
- "license holder" means a person who holds a license issued by the commission;
- "metropolitan statistical area" means a metropolitan statistical area designated by the United States Office of Management and Budget;
- "pari-mutuel wagering" has the meaning assigned by Section 2021.003, Occupations Code (in the Texas Racing Act);
- "patron" or "player" means a person who contributes any part of the consideration to play a casino game or to engage in sports wagering, and consideration does not include a separate fee payable in order to wager;
- "slot machine" means a casino game in which a player uses a mechanical, electromechanical, electronic, or other device that, on insertion of a coin, token, or similar object or on payment of consideration, is available to play or operate, the play or operation of which, wholly or partly by chance, may entitle the player operating the machine to receive or deliver to the player a payment for winnings in the form of cash, premiums, merchandise, tokens, or any other thing of value
- "table game" means a casino game played in a casino, including roulette, keno, twenty-one, blackjack, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, and other similar casino games; but the term does not include a slot machine; and
- "Indian lands" means land on which gaming is permitted under the federal Indian Gaming Regulatory Act or land that was held in trust by the United States on January 1, 1998, for the benefit of the Indian tribe pursuant to the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act.

### **Peace Officer Classification**

C.S.H.B. 2843 amends the Code of Criminal Procedure to classify investigators, security officers, and enforcement officers commissioned by the gaming commission as peace officers.

### **Gaming Commission Access to Criminal History Record Information**

C.S.H.B. 2843 amends the Government Code to entitle the gaming commission to obtain from DPS criminal history record information maintained by DPS that relates to any of the following:

- a person who manufactures or distributes casino equipment or supplies or a representative of a person who manufactures or distributes casino equipment or supplies offered to the casino;
- a person who has submitted a written bid or proposal to the gaming commission in connection with the procurement of goods or services by the commission, if the amount of the bid or proposal exceeds \$500;
- a person who proposes to enter into or who has a contract with the gaming commission to supply goods or services to the commission;
- if any person described above is not an individual, each individual who:
  - is an officer or director of the person;
  - holds more than five percent of the stock in the person;
  - holds an equitable interest greater than five percent in the person;
  - shares or will share in the profits, other than stock dividends, of the person;
  - participates in managing the affairs of the person; or
  - is an employee of the person who enters or will enter a casino in Texas to perform a business function or who is or will be in close proximity to money from casino gaming or sports wagering;

- a casino employee or an applicant for an occupational license;
- a person required to hold a license or be named in a license application;
- an employee or prospective employee, including the executive director or a prospective executive director, of the gaming commission; or
- any of the persons listed above whose license is renewed.

The bill prohibits the release or disclosure of any criminal history record information obtained by the gaming commission under these provisions to any person except on court order. However, the gaming commission is not prohibited from disclosing to the person who is the subject of the criminal history record information the dates and places of arrests, offenses, and dispositions contained in the information.

### **Defenses for Penal Code Gambling Offenses**

C.S.H.B. 2843 amends the Penal Code to establish the following defenses to prosecution of offenses related to gambling:

- a defense to prosecution for the offense of gambling that the actor reasonably believed that the applicable conduct consisted entirely of participation in casino gaming or sports wagering authorized under an appropriate license issued under the bill's Occupations Code provisions;
- a defense to prosecution for certain conduct constituting the offense of possession of a gambling device, equipment, or paraphernalia that the person owned, manufactured, transferred, or possessed the gambling device, equipment, or paraphernalia for the sole purpose of shipping it to a person authorized under such a license;
- a defense to prosecution for the offenses of gambling promotion and keeping a gambling place that the actor reasonably believed that the applicable conduct was permitted under the bill's Occupation Code provisions; and
- a defense to prosecution for any of the gambling-related offenses that the conduct was actually authorized under the bill's Occupations Code provisions.

C.S.H.B. 2843 establishes as an exception to the application of the offense of communicating gambling information that the information communicated is intended for use in placing a lawful wager under the bill's Occupations Code provisions and is not communicated in a manner that constitutes the offense of touting under the Texas Racing Act.

### **EFFECTIVE DATE**

The date on which the constitutional amendment proposed by H.J.R. 155, 88th Legislature, Regular Session, 2023, takes effect, if approved by the voters.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

While C.S.H.B. 2843 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute expressly provides that the phrase "higher education", as used in both the introduced's and the substitute's definition of "education" includes "the creation of a permanent fund for the benefit of higher education institutions not included in the Permanent University Fund established by Section 11, Article VII, Texas Constitution". The introduced did not so provide.

The introduced included a horse race on which pari-mutuel wagering is authorized by law among the live sporting events on which the bill authorizes sports wagering, whereas the substitute does not.

The introduced prohibited the operation of any game using a slot machine or other gaming device except as provided by the bill's provisions. The substitute clarifies that the Bingo Enabling Act also provides an exception.

The substitute provides, in the established public policy of the state, that regulated casino gaming or sports wagering by adults at a limited number of destination resorts and on Indian lands will not harm the welfare of Texas, whereas the introduced omitted sports wagering and omitted Indian lands from that provision.

The substitute clarifies that the gaming commission must allow the operation of limited casino gaming or sports wagering under the bill's provisions at locations on Indian lands in accordance with an effective gaming agreement and in compliance with applicable federal law, whereas the introduced only referenced the operation of limited casino gaming at such locations.

The substitute, in a provision regarding the submission of a gaming employee report on or before the 15th day of each month, clarifies that "a casino or operator license holder" must submit the gaming employee report to the gaming commission, whereas the introduced provided that "a casino owner or casino operator license holder" must submit the report.

The substitute omits the provision from the introduced requiring an applicant for a casino license to include with their application proof that casino gaming was approved by the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, authorizing and regulating casino gaming at destination resorts.

The substitute includes a requirement not in the introduced for the gaming commission to consider certain specified factors when selecting an applicant for a casino license through an open bid process, if such a process is required by the Texas Constitution.

The substitute defines the terms "greyhound racing", "horse race meeting", "horse racing day", and "Class 1 racetrack", whereas the introduced did not. The substitute places the definition of the term "racetrack association" within the section of the Occupations Code, as added by the bill, titled "Horse Racing; Greyhound Racing; Scope of Commission Authority Governing Racetrack Associations" and provides that that definition applies in that section of the Occupations Code, whereas the introduced placed the definition of "racetrack association" in the section of the Occupations Code, as added by the bill, titled "Definitions" and provided that that definition in the introduced applied throughout the new subtitle added by the bill to the Occupations Code. The introduced defined the term "racetrack", whereas the substitute does not.

With respect to the distribution of the revenue from the casino gaming tax imposed by the bill, the introduced included a requirement for the comptroller to deposit 30 percent of the revenue to the credit of the property tax relief fund. The substitute omits this requirement. Moreover, the substitute reduces the amount allocated for funding public safety programs from 30 percent, as in the introduced, to 10 percent. The introduced allocated 30 percent of revenue for use in funding education, whereas the substitute increases this amount to 80 percent and further provides that, if a constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, renaming the National Research University Fund as the Texas University Fund is approved by the voters and takes effect, an amount equal to the lesser of \$1 billion each state fiscal year or 80 percent of the revenue collected each state fiscal year is allocated to the Texas University Fund.

Regarding a license suspension or revocation that takes effect on receipt of notice, the substitute allows a hearing requestor and the gaming commission to agree to hold a hearing on that suspension or revocation later than the 14th day after the date the commission receives the request for the hearing. The original required the hearing to be held not later than that 14th day

and did not provide the hearing requestor and the commission with the power to agree to extend that timeframe (though both the introduced and the substitute provide for the possibility the hearing may be continued).

The introduced and the substitute both provide for judicial review of the denial, suspension, or revocation of a license or the imposition of a fine. However, the substitute waives the sovereign immunity of the state from suit and from liability for the limited purpose of allowing a person to obtain such judicial review, whereas the introduced did not.

Whereas the introduced included a provision establishing that the state does not waive its sovereign immunity by negotiating gaming agreements with Indian tribes or other persons for the operation of casino gaming or gambling games, the substitute provides that such provision applies except as expressly provided by the Texas Constitution. The substitute also includes a provision absent from the introduced clarifying that the bill's provisions relating to the resolution of disputes with regard to gaming operations on Indian lands provide the only waiver of sovereign immunity relative to gaming operations.

The substitute makes certain clarifying changes to the offense established by the introduced relating to the operation, use, or possession of a gaming device.

The substitute makes the effective date the date on which the constitutional amendment proposed by H.J.R. 155, 88th Legislature, Regular Session, 2023, takes effect, if approved by the voters. The introduced set the effective date by reference to an "amendment proposed by the 88th Legislature, Regular Session, 2023, to foster economic development and job growth, provide tax relief and funding for education and public safety programs, and reform and support the horse racing industry by authorizing casino gaming at destination resorts, authorizing sports wagering, creating the Texas Gaming Commission to regulate casino gaming and sports wagering, requiring a license to conduct casino gaming, and requiring the imposition of a gaming tax, sports wagering tax, and license application fees".

The substitute includes references to sports wagering in provisions relating to the following where the introduced referenced only casino gaming:

- the definitions of "gaming device," "gaming employee," and "principal manager";
- training requirements for gaming commission members;
- conflict of interest provisions relating to the executive director;
- certain elements of the established public policy of the state regarding casino gaming and sports wagering;
- gaming commission approval for internal procedures and administrative and accounting controls;
- grounds for prohibiting an employee from performing acts related to gaming;
- a requirement for a license holder to indemnify the state, the gaming commission, and all officers and employees of the state and the commission from certain claims;
- the contents of an application for a casino license;
- the prohibition on the gaming commission's issuance of a casino license for a location in which casino gaming or sports wagering is prohibited under a gaming agreement between an Indian tribe and the state;
- the considerations given in determining initial and continuing suitability for a casino license;
- the provision that establishes that a casino license authorizes casino gaming or sports wagering only at the specific site identified in the license;
- replacement casino licenses;
- requirements for the availability of a key employee at a casino;
- the denial, suspension, limitation, or revocation of a license;

- the circumstances under which a casino service license is required;
- the adoption of rules for the regulation of casino operations;
- the use of chips or tokens;
- the status of a casino license holder's certain books and records as not public records and the prohibition on the gaming commission's publication and dissemination of those materials;
- the exclusion or ejection of certain persons from a casino;
- the bill's provision regarding the state's sovereign immunity in connection with negotiating gaming agreements; and
- gaming commission access to criminal history record information maintained by DPS.