

- SUBJECT:** Revising the definition of gambling device, contrivance
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — Kuempel, Thompson, Geren, Hamilton, Jones, Menendez, Quintanilla
- 1 nay — Gutierrez
- 1 absent — Chisum
- WITNESSES:** For — Donald Atkins, Houston Police Department; Joel Littlefield, Hunt County Attorney’s Office; (*Registered, but did not testify:* Freddie Door, Thomas Hanjen, Galveston County Sheriff’s Office; James Jones Texas Police Chiefs Association; Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; Gary Tittle, Dallas Police Department; Ann Travis, City of Houston)
- Against — None
- On — Anatole Barnstone, Amusement and Music Operators of Texas; (*Registered, but did not testify:* James Wrentz, Department of Public Safety)
- BACKGROUND:** Under Penal Code, sec. 47.02(e), it is a defense to prosecution for gambling if a person played for something of value other than money, using an electronic, electromechanical, or mechanical contrivance excluded from the definition of “gambling device” under Penal Code sec. 47.01(4)(B). Gambling device is defined in sec. 47.01(4), in part, to be any electronic, electromechanical, or mechanical contrivance not excluded under other sections of 47.01.
- DIGEST:** HB 358 would revise the definition of “device” and “contrivance” used in Penal Code ch. 47 provisions on gambling so that the definition meant all or part of an electronic, electromechanical, or mechanical contrivance, machine, or apparatus.

The bill would take effect September 1, 2009, and would apply only to offenses occurring on or after that date.

**SUPPORTERS  
SAY:**

HB 358 would aid law enforcement authorities in combating illegal gambling machines. Currently, after authorities seize gambling machines, they must store them until after a trial. The machines are large, and storing them can be a burden. In many cases, it takes only a small number of machines to fill a law enforcement agency's evidence storage area and, in some areas, authorities may have trouble finding or paying for additional storage. The sheer volume of machines can be overwhelming, especially in small counties with limited resources.

HB 358 would address this problem by allowing law enforcement authorities to store just a part of gambling machines, instead of the whole machine. They would be able to remove and store just the mother boards of gambling machines, which are the core of the machines and contain the information necessary for prosecutions to go forward. Taking the mother boards would disable the machines so that no more gambling could occur and would relieve storage pressure on law enforcement authorities, letting them work more cases.

Currently, some machine operators simply replace seized machines. While under HB 358 machine operators would have to replace just the mother boards, a significant cost deterrent to doing this would remain because the mother board represents the most expensive and important part of the machines.

HB 358 would not be a major departure from current practices. For example, in theft cases law enforcement authorities generally do not store the stolen goods but take pictures of them and return the goods to the owner. Making this change in the Penal Code would ensure that juries knew it was permissible for law enforcement authorities to seize just the mother boards. If a court awarded the property back to the owners, the mother boards would be returned.

**OPPONENTS  
SAY:**

HB 358 could have the unintended consequence of furthering more illegal gambling. Seizing just a mother board and leaving most of a gambling machine in place would allow machine operators to drop a replacement mother board into a machine and continue illegal activity. This would stray too far from traditional practices of taking all of the actual evidence

in a criminal case and would be analogous to taking bullets as evidence and leaving guns.

The bill could have other implications, such as shifting the debate over an illegal gambling machine to a debate over machine parts, and this could confuse juries. It is unclear what would happen if a prosecutor were unsuccessful in making a case and the court awarded the machines back to their owner.

**NOTES:**

The companion bill, SB 358 by Gallegos, is pending in the Senate State Affairs Committee.