

Analysis of House Bills 1127 and 2123

<p>HB No. 1127: Relating to the regulation of game rooms by certain counties; providing penalties; authorizing a fee. Authors: Smith Bohac Allen Harless Guillen Coauthors: Fletcher Hernandez Luna Murphy Riddle Vo Wu Sponsors: Patrick Effective Date: upon passage or September 1, 2013. Stage: Bill was filed on 02/08/2013, was approved by the House Committee on Licensing & Administrative Procedures (04/02/2013), and voted on by the House (04/19/2013) and out of Senate Committee on Intergovernmental Relations (05/16/2013). Last Action: <u>05/21/2013 S Placed on local & uncontested calendar</u></p>	<p>HB No. 2123 relating to the regulation of game rooms in certain counties; providing penalties; authorizing a fee. Authors: Guillen Sponsors: Lucio Effective Day: Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2013. Stage: Bill was filed on 03/01/2013, out of House Committee on Licensing & Administrative Procedures (05/02/2013), voted on by House (5/9/2013) and is out of the Senate Committee on Intergovernmental Relations (5/17/2013). Last Action: <u>05/17/2013 S Committee report printed and distributed</u></p>
<p>Fiscal Impact: No fiscal implication to the State is anticipated. Because the bill would not have statewide impact on units of local government of the same type or class, no comment from Legislative Budget Board is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.</p>	
<p>SUMMARY</p>	
<p>Version approved by the Senate Intergovernmental Relations</p>	<p>Version approved by the Senate Intergovernmental Relations (05/17/2013)</p>
<p>C.S.H.B. 1127 amends Chapter 234, Local Government Code by adding a Subchapter E. Game Rooms that authorizes the commissioners' court of a county with a population of four million or more, or with a population of less than 25,000 that is adjacent to the Gulf of Mexico and is within 50 miles of an international border, to regulate the operation of game rooms.</p> <p>The bill authorizes the Commissioners' Court to:</p> <ul style="list-style-type: none"> • Restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county; • Prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place of religious worship, or residential neighborhood; or • Restrict the number of game rooms that may operate in a specified area of the county. <p>The bill authorizes a county to require the owner or operator of a game</p>	<p>C.S.H.B. 2123 amends Chapter 234, Local Government Code by adding a Subchapter E. Game Rooms that authorizes the commissioners' court of a county with a population of less than 25,000 that borders the Gulf of Mexico and is adjacent to two or more counties each with a population of more than 400,000, to regulate the operation of game rooms.</p> <p>The bill authorizes the Commissioners' Court to:</p> <ul style="list-style-type: none"> • Restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county; • Prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place of religious worship, residential neighborhood, or other specified land use the commissioners court finds inconsistent with the operation of a game room; or • Restrict the number of game rooms that may operate in a specified area of the county. <p>The bill authorizes a county to require the owner or operator of a game</p>

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room to obtain a **license or permit or renew a license or permit** on a periodic basis to operate a game room in the county.

It also requires an application for a license or permit to be made in accordance with regulations adopted by the county and authorizes such regulations to provide for the denial, suspension, or revocation of a license or permit.

It establishes that a **district court has jurisdiction of a suit** that arises from a county's denial, suspension, or revocation of a license or other permit. The bill authorizes the county to impose a fee of up to \$1,000 on an applicant for a license or permit or for the renewal of the license or permit and requires the fee to be based on the cost of processing the application and investigating the applicant.

It authorizes a **peace officer or county employee** to inspect a business in the county to determine how many gambling devices or amusement redemption machines that are subject to regulation are located on the premises of the business and authorizes a peace officer or county employee to inspect any business in which one or more gambling devices or six or more amusement redemption machines are located to determine whether the business is in compliance with the bill's provisions and regulations adopted under the bill's provisions.

It establishes that a person violates its provisions if one or more gambling devices or six or more amusement redemption machines are located on the premises of the business and the person fails to allow a peace officer or county employee to conduct an inspection.

The bill authorizes **the county to sue in district court for an injunction** to prohibit the violation or threatened violation of the bill's provisions or a game room regulation adopted by the commissioners' court.

The bill establishes that a person who violates the bill's provisions or such a regulation is liable to the county for **a civil penalty of not more than \$10,000 for each violation** and specifies that each day a violation

room to obtain a **license or permit or renew a license or permit** on a periodic basis to operate a game room in the county.

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The bill establishes that a **district court has jurisdiction of a suit** that arises from a county's denial, suspension, or revocation of a license or other permit. The bill authorizes the county to impose a fee on an applicant for a license or permit or for the renewal of the license or permit and requires the fee to be based on the cost of processing the application and investigating the applicant.

It authorizes **a county** to inspect any business that contains one or more amusement redemption machines to determine whether the business is in compliance with the bill's provisions and regulations adopted under the bill's provisions.

The bill authorizes **the county to sue in district court for an injunction** to prohibit the violation or threatened violation of the bill's provisions or a game room regulation adopted by the commissioners' court.

The bill establishes that a person who violates the bill's provisions or such a regulation is liable to the county for **a civil penalty of not more than \$10,000 for each violation** and specifies that each day a violation continues is considered a separate violation for purposes of assessing the

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continues is considered a separate violation for purposes of assessing the civil penalty.

The bill authorizes **the county to bring suit in district court** to recover the civil penalty and entitles the county to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, and investigatory costs.

The bill makes it a **Class A misdemeanor offense** to intentionally or knowingly operate a game room in violation of a regulation adopted under the bill's provisions. The bill specifies that a person who is subject to prosecution for such an offense and any other law may be prosecuted under either or both laws.

It establishes that authority under the bill's provisions is cumulative of other authority that a county has to regulate game rooms and does not limit that authority. The bill's provisions do not legalize any activity prohibited under the Penal Code or other state law.

The bill establishes that a person's compliance with the bill's provisions, including operating a game room under a license or permit issued under the bill's provisions, is not a defense to prosecution for a gambling offense.

BACKGROUND AND PURPOSE

Interested parties contend that some amusement redemption machine operators have set up their machines to provide cash prizes in violation of the law. These parties observe that in order to circumvent undercover investigations that generally have allowed law enforcement agencies to shut down such illegal operations, operators have changed their business model by restricting access to allow only members or known referrals.

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H.B. 2123 seeks to promote public health, safety, and welfare by providing the commissioners court in a lesser populated county the necessary authority to regulate game rooms.

H.B. 2123 amends current law relating to the regulation of game rooms in

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<p>C.S.H.B. 1127 amends current law relating to the regulation of game rooms in certain counties; providing penalties, and authorizes a fee.</p> <p>RULEMAKING AUTHORITY This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency</p>	<p>certain counties; providing penalties; authorizing a fee.</p> <p>RULEMAKING AUTHORITY It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.</p>
<p>Sec. 234.131. DEFINITIONS.</p> <p>(1) "Amusement redemption machine" means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that rewards the player exclusively with noncash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, 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 amount is less.</p> <p>(2) "Game room" means a for-profit business located in a building or place that contains six or more amusement redemption machines.</p> <p>(3) "Game room owner" means a person who:</p> <ul style="list-style-type: none"> (A) has an ownership interest in, or receives the profits from, a game room or an amusement redemption machine located in a game room; (B) is a partner, director, or officer of a business, company, or corporation that has an ownership interest in a game room or in an amusement redemption machine located in a game room; (C) is a shareholder that holds more than 10 percent of the outstanding shares of a business, company, or corporation that has an ownership interest in a game room or in an amusement redemption machine located in a game room; (D) has been issued by the county clerk an assumed name 	<p>Sec.234.131.DEFINITIONS.</p> <p>(1) "Amusement redemption machine" means a recreational machine that provides a user of the machine with an opportunity to receive something of value, other than a right of replay on the machine, based solely or partially on chance and that accumulates credits or the equivalent of credits when the machine:</p> <ul style="list-style-type: none"> (A) displays a winning configuration of like symbols randomly selected by the machine; (B) matches a winning combination of symbols or numbers to symbols or numbers randomly selected by the machine; (C) displays a winning combination of cards that is valued in a traditional hierarchy for a poker card game; or (D) displays a winning combination of cards and points assigned in a traditional blackjack card game. <p>(2) "Game room" means a for-profit business located in a building or place that contains five or more amusement redemption machines.</p> <p>(3) "Game room owner" means a person who:</p> <ul style="list-style-type: none"> (A) has an ownership interest in, or receives the profits from, a game room or an amusement redemption machine located in a game room; (B) is a partner, director, or officer of a business, company, or corporation that has an ownership interest in a game room or an amusement redemption machine located in a game room; (C) is a shareholder that holds more than 50 percent of the outstanding shares of a business, company, or corporation that has an ownership interest in a game room or an amusement redemption machine located in a game room; (D) has been issued by the county clerk an assumed name certificate

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certificate for a business that owns a game room or an amusement redemption machine located in a game room;

- (E) signs a lease for a game room;
- (F) opens an account for utilities for a game room;
- (G) receives a certificate of occupancy or certificate of compliance for a game room;
- (H) pays for advertising for a game room; or
- (I) signs and alarm permit for a game room.

(4) **"Operator"** means an individual who:

- (A) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;
- (B) displays, delivers, or provides to a customer of a game room merchandise, goods, entertainment, or other services offered on the premises of a game room;
- (C) takes orders from a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;
- (D) acts as a door attendant to regulate entry of customers or other persons into a game room; or
- (E) supervises or manages other persons at a game room in the performance of an activity listed in this subdivision.

Sec. 234.132. APPLICABILITY. This subchapter applies only to a county with a population of four million or more.

Sec. 234.133. AUTHORITY TO REGULATE. To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:

- 1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county;
- 2) prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place

for a business that owns a game room or an amusement redemption machine located in a game room;

- (E) signs a lease for a game room;
- (F) opens an account for utilities for a game room;
- (G) receives a certificate of occupancy or certificate of compliance for a game room;
- (H) pays for advertising for a game room; or
- (I) signs and alarm permit for a game room.

(4) **"Operator"** means an individual who:

- (A) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;
- (B) displays, delivers, or provides to, or takes orders from, a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;
- (C) acts as a door attendant to regulate entry of customers or other persons into a game room; or
- (D) supervises or manages other persons at a game room in the performance of an activity listed in this subdivision.

Sec.234.132.APPLICABILITY. This subchapter applies only to a county with a population of less than 25,000 that borders the Gulf of Mexico and is adjacent to two or more counties each with a population of more than 400,000.

Sec.234.133.AUTHORITY TO REGULATE. To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:

- 1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county;
- 2) prohibit the location of a game room within the distance prescribed by the commissioners court of a school, regular place of religious

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- of religious worship, or residential neighborhood; or
- 3) restrict the number of game rooms that may operate in a specified area of the county.

Sec. 234.134. LICENSES OR PERMITS.

- (a) A county may require that an owner or operator of a game room obtain a license or permit or renew a license or permit on a periodic basis to operate a game room in the county. An application for a license or permit must be made in accordance with regulations adopted by the county.
- (b) Regulations adopted under this section may provide for the denial, suspension, or revocation of a license or permit.
- (c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a county.

Sec. 234.135. FEES.

A county may impose a fee not to exceed \$1,000 on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant.

Sec. 234.136. INSPECTION.

- (a) A peace officer or county employee may inspect a business in the county to determine how many amusement redemption machines that are subject to regulation under this subchapter are located on the premises of the business.
- (b) A peace officer or county employee may inspect any business in which six or more amusement redemption machines are located to determine whether the business is in compliance with this subchapter or regulations adopted under this subchapter.
- (c) A person violates this subchapter if the person fails to allow a peace officer or county employee to conduct an inspection under this section.

Sec. 234.137. INJUNCTION; CIVIL PENALTY.

- (a) A county may sue in district court for an injunction to prohibit the violation or threatened violation of this subchapter or a

worship, residential neighborhood, or other specified land use the commissioners court finds inconsistent with the operation of a game room; or

- 3) restrict the number of game rooms that may operate in a specified area of the county.

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- (b) Regulations adopted under this section may provide for the denial, suspension, or revocation of a license or permit.
- (c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a county.

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A county may impose a fee on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant.

Sec.234.136.INSPECTION. A county may inspect any business that contains one or more amusement redemption machines to determine whether the business is in compliance with this subchapter or regulations adopted under this subchapter.

Sec.234.137.INJUNCTION; CIVIL PENALTY.

- (a) A county may sue in district court for an injunction to prohibit the violation or threatened violation of a regulation adopted under

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regulation adopted under Section 234.133.

- (b) A person who violates this subchapter or a regulation adopted under Section 234.133 is liable to the county for a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by this subsection.
- (c) The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Sec. 234.138. CRIMINAL PENALTY.

- (a) A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted under Section 234.133.
- (b) An offense under this section is a Class A misdemeanor.

Sec. 234.139. CUMULATIVE EFFECT.

Authority under this subchapter is cumulative of other authority that a county has to regulate game rooms and does not limit that authority.

Sec. 234.140. EFFECT ON OTHER LAWS.

- (a) This subchapter does not legalize any activity prohibited under the Penal Code or other state law.
- (b) A person's compliance with this subchapter, including operating a game room under a license or permit issued under this chapter, is not a defense to prosecution for an offense under Chapter 47, Penal Code.
- (c) A person who is subject to prosecution under Section 234.138 and any other law may be prosecuted under either or both laws.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Section 234.133.

- (b) A person who violates a regulation adopted under Section 234.133 is liable to the county for a civil penalty of not more than \$10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by this subsection.
- (c) The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Sec.234.138.CRIMINAL PENALTY.

- (a) A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted under Section 234.133.
- (b) An offense under this section is a Class A misdemeanor.

Sec.234.139.CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county has to regulate game rooms and does not limit that authority.

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- (a) This subchapter does not legalize any activity prohibited under the Penal Code or other state law.
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