

SUBJECT: Legalizing and regulating online interactive sports wagering in Texas

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Hunter, Hernandez, Anchía, Geren, Guillen, Raymond, Spiller,
S. Thompson, Turner

3 nays — Metcalf, Slawson, Smithee

1 absent — Dean

WITNESSES: For — Jason Cohen, Dallas Cowboys; Christopher Grove, Eilers & Krejcik Gaming; Giles Kibbe, Houston Astros and PGA Tour; Eric Schippers, Penn Entertainment; Bobby Perez, San Antonio Spurs; Scott Ward, Sports Betting Alliance; Evan Kirkham; Arthuro McDowell (*Registered, but did not testify*: Kelly Barnes, Austin FC and Houston Dynamo; Steve Bresnen, Bingo Interest Group; Brad Schlueter, Caesars Entertainment; Jay Howard, Dallas Stars, National Football League, PGA Tour, and Texas Motor Speedway; Neal Buddy Jones, FC Dallas and Houston Texans; Gerry Del Prete, Fertitta Entertainment; Mark Smith, Mountain Star Sports Group; Michael Schneider, Texas Association of Broadcasters; Justin Yancy, Texas Business Leadership Council; Jim Cochrane, Texas Rangers Baseball Club; Daniel Hodge, The Chickasaw Nation; Mike Meroney, The Dallas Wings; Art Granado; Jorge Martinez; Samuel Sheetz; David Weinberg)

Against — Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; Jennifer Hughes, Kickapoo Traditional Tribe of Texas; Cindy Asmussen, Southern Baptists of Texas Convention; Russ Coleman, Texans Against Gambling; Cindi Castilla, Texas Eagle Forum; Jonathan Covey, Texas Values (*Registered, but did not testify*: Tisha Crow, Jill Glover, Republican Party of Texas; John Litzler, Texas Baptists Christian Life Commission; Fran Rhodes, True Texas Project; and seven individuals)

On — Brad Reynolds, TX Comptroller of Public Accounts

BACKGROUND: Some have suggested that Texas would benefit from the legalization of sports wagering.

DIGEST: HB 1942 would establish provisions in the Occupations Code and Penal Code regarding the authorization and regulation of sports wagering and related legal penalties. The bill would add ch. 2005 to the Occupations Code, which could be cited as the Texas Sports and Entertainment Recovery Act.

Definitions. The bill would define certain terms related to sports wagering, including:

- “cash equivalent” as an asset that was convertible to cash and approved for use in connection with authorized sports wagering;
- “class 1 racetrack” as a racetrack on which live racing was conducted and subject to certain restrictions that was in existence on January 1, 2023;
- “covered service” as any service that involved the operation, management, or control of wagers authorized by the bill;
- “key person” as an officer or director of an interactive sports wagering operator who was directly involved in the operation, management, or control of sports wagering or exercised substantial influence or control over the interactive sports wagering operator’s activities;
- “sports entity” as a sports team, sports organization, or class 1 racetrack;
- “sports wagering” as a bet placed on sporting events or portions of such events, or on the individual performance statistics of athletes in a sporting event or combination of events;
- “tier two sports wager” as a sports wager placed after a sporting event began; and
- “tier one sports wager” as any sports wager other than a tier two sports wager.

Compliance. All sports wagering authorized by the bill would have to be

initiated, received, and otherwise placed within the boundaries of the state unless otherwise authorized by Texas Lottery Commission (TLC) rule adopted in accordance with applicable federal and state laws. Consistent with current federal law, the intermediate routing of electronic data relating to authorized online sports wagering would not determine the location in which wagers were initiated, received, or otherwise placed.

Commission powers and duties. The bill would establish the powers and duties of the Texas Lottery Commission in the administration of sports wagering in the state.

The bill would require TLC to establish an interactive sports wagering program and issue permits to operate interactive sports wagering on sporting events. TLC could not authorize wagering involving youth sports. The TLC executive director would administer and enforce the provisions of the bill under TLC direction.

TLC would be required to certify each month to the comptroller a full and complete statement of sports wagering revenue and expenses for the preceding month. TLC also would provide to the comptroller, by September 30 of each year, a full and complete statement of sports wagering revenue and expenses for the preceding fiscal year and any recommendations for amendments that could be warranted and prudent to protect the public interest.

TLC and the comptroller each independently would have the right to audit the books and records of interactive sports wagering operators and relevant service providers. The bill would allow the comptroller to conduct an audit of any taxes or fees imposed by the bill in the same manner as other state taxes.

The bill would require TLC to adopt rules allowing operators and service providers to use systems that offset loss or manage risk in the operation of sports wagering. Such rules would require that adequate protections be maintained at all times to ensure sufficient funds were available to pay all sports wagering players.

TLC could not authorize a person to:

- operate or allow the operation of a place of public accommodation, a club, or a similar establishment in which computer terminals or similar devices were intended or made available for the primary use of accessing a sports wagering platform; or
- otherwise advertise to the general public that the place of public accommodation, club, or similar establishment was available to engage in sports wagering.

The bill would allow TLC to suspend wagering on any competition as necessary to protect the integrity of a competition or its participants. A sports governing body could submit a written request to TLC to restrict, limit, or exclude a certain type, form, or category of sports wagering for the body's sporting events, and TLC would grant such a request on a demonstration of good cause from the requestor. The bill would require TLC to respond to such a request before the event began if feasible or respond by the seventh day after the date the request was submitted.

TLC by rule would adopt and administer a monitoring program sufficient to protect the integrity of all sports wagering regulated by the bill. The program would provide for the sharing of suspicious activities on wagering with operators and regulators in other states.

Voluntary exclusion program. The bill would require TLC by rule to establish, implement, and administer a voluntary exclusion program. TLC would be required to establish and administer a statewide self-exclusion list that allowed an individual to register on the TLC public website for self-exclusion and required TLC to regularly distribute the list to each interactive sports wagering operator. The rules would also require each interactive sports wagering operator to provide information on the procedures for individuals to request to be added to the list and for operators to bar individuals on the list from any further-participation in sports wagering.

An individual who participated in the program would agree to refrain from participating in sports wagering for the period specified in the exclusion registration agreement. A participating individual also would agree not to petition TLC for removal from the program for the period specified in the exclusion registration agreement. A permit holder would be required to make all commercially reasonable attempts and cause its sales agents and others operating on its behalf to make reasonable efforts to cease all direct marketing efforts to individuals participating in the program.

An individual's registration in the program would not prevent a permit holder, its agents, and others operating on their behalf from seeking payment of a debt accrued by the individual before the individual entered the program.

Sports wagering permits. The bill would establish provisions for the granting of sports wagering permits to certain sports entities.

The bill would allow TLC to issue no more than one interactive sports wagering permit for each authorized sports entity. Each sports entity could specify only one designee as an authorized sports entity. TLC would be required to prescribe an application form for an interactive sports wagering permit and issue such a permit to an entity that submitted a completed application and paid a fee of \$500,000. TLC could issue such a permit to a sports entity designee only if the designee was based in the United States.

An applicant for a service provider permit would submit an application to TLC and pay a fee of \$25,000. Such an application would include certain information about the applicant and any information considered necessary by TLC. The bill would require TLC to conduct a background check on each service provider applicant, including any key persons of the applicant. A background check would include a credit history check, a tax record check, and a criminal history record check.

TLC would be required to grant or deny a completed application by the 90th day after receiving that application. The decision would be final and

could not be appealed, except as otherwise required under state law. TLC could accept a license, permit, or any other authorization to operate sports wagering issued by another jurisdiction that TLC specifically determined had similar permitting requirements as evidence that the applicant met the interactive sports wagering operator requirements. TLC could accept another jurisdiction's or an approved third party's testing of the wagering platform as evidence that the platform met any relevant requirements.

The bill would require TLC to grant a permit to an applicant for a service provider permit, except under certain conditions related to an applicant that would not satisfy the duties of a provider, was not of good character or integrity, knowingly failed to comply with the bill or TLC rules, was previously convicted of certain offenses, had a similar license revoked by another state, or defaulted on certain obligations or debt.

The information an applicant submitted in an application would be confidential and exempt from public disclosure.

An issued permit would expire on the third anniversary of the date of issuance. If the permit application was submitted by a sports entity's or affiliate's designee, a permit would expire on the earlier of:

- the third anniversary of the date of issuance; or
- the expiration date of any contract between the entity or an affiliate authorizing the designee to manage and operate the entity's or affiliate's sports wagering activities.

At least 60 days before the expiration of a permit, a permit holder could renew a permit by submitting a renewal application and paying a fee of \$100,000 for renewal of an interactive sports wagering permit or \$10,000 for renewal of a service provider permit. TLC could deny a renewal application under certain circumstances.

The bill would specify guidelines for TLC to post, open, and review applications for a sports wagering permit.

Sports wagering operators. HB 1942 would establish provisions regarding sports wagering operators, including interactive accounts, third parties, and commercial agreements.

The bill would require an interactive sports wagering operator and its service provider to implement reasonable measures to:

- ensure that only individuals physically located in the state or otherwise authorized by TLC rule could place a wager through its platform;
- protect the confidential information of players;
- prevent wagering on prohibited events;
- prevent individuals from placing wagers as agents or proxies for others;
- allow individuals to restrict themselves from placing wagers through the platform under the voluntary exclusion program;
- establish procedures to detect suspicious or illegal wagering activity; and
- provide for the withholding or reporting of income tax of players.

An operator would be required to maintain records of all wagers placed on a sporting event and suspicious or illegal activity until three years after the date of the event. An operator also would be required to disclose such records to TLC on request. If a sports governing body notified TLC that real-time information sharing for wagers placed on its sporting events was necessary and desirable, operators would be required to share with that governing body or its designee certain information in real time. In advertising its sports wagering platform, an operator would ensure that its advertisements were not targeted to individuals under age 21, disclosed the identity of the operator's brand, provided information about problem gambling and prevention, and were not misleading.

Establishment of interactive accounts. An interactive sports wagering operator would be responsible for verifying the identity of a player and ensuring the player was at least 21 years old and could remotely verify the

identity of a player to establish the player's interactive sport wagering account. A player could not establish more than one account with any operator. Certain persons would be prohibited from placing sports wagers.

An operator and the operator's service providers could not accept a wager from certain individuals if the operator or service provider had notice or knowledge that the individual was prohibited from placing a sports wager. The bill would require an interactive sports wagering account to be established in the name or on behalf of a player who was a natural person and could not be in the name of any other entity. An account would be established through the operator's sports wagering platform, a specialized website or other interface, or by any other TLC approved means and would include certain terms to guarantee the integrity of the account. The operator could allow for the establishment, verification, and funding of an account remotely under certain circumstances.

An operator could suspend or terminate an account:

- if the player was determined to have provided false or misleading information or engaged in cheating or other unlawful conduct;
- if the player was barred from placing sports wagers in the state;
- if the player was or would otherwise become ineligible;
- if the operator determined it lacked sufficient information to verify the player's age and eligibility; or
- for any other reason at the discretion of the operator not based on lawfully protected characteristics.

On termination for any reason other than providing false information, cheating, or unlawful conduct, an operator would be required to provide the player sufficient time and access to withdraw funds from the account.

Subject to TLC approval, the bill would allow an operator to assign the operator's interactive sports wagering operations to a third-party designee to manage and operate the operator's sports wagering activities. A third-party designee would be required to submit to TLC the information required for a permit applicant.

An operator could offer fantasy sports contests to the extent those contests were authorized by law.

The bill would not require an operator to use official league data in determining the result of a tier one sports wager. A sports governing body could notify TLC of the body's determination that an operator would use official league data to settle tier two sports wagers. TLC would notify each operator of the body's notification by the fifth day after the date TLC received the notification. If a governing body did not notify TLC of its determination to provide official league data, an operator would not be required to use official league data in determining the result of a tier two sports wager on a professional sports event of the league governed by the governing body.

By the 60th day after the date TLC notified each operator, a permit holder could only use official league data to determine the results of tier two sports wagers on relevant events, except under certain conditions.

Any sports governing body could enter into a commercial agreement with an operator under which the governing body could share in the amounts wagered or revenue derived from sports wagering on the governing body's sporting events. A governing body would not be required to obtain a permit or other approval from TLC to lawfully accept such amounts or revenues.

Competition integrity. HB 1942 would establish provisions to relating to the integrity of competitions, including prohibiting certain events, investigations, and reporting.

The bill would prohibit a person from placing or accepting a sports wager on youth sports.

TLC and operators would be required to cooperate with investigations conducted by sports governing bodies or law enforcement agencies, including by providing account-level wagering information and audio or

video files relating to individuals placing wagers.

An operator would be required to promptly report to TLC and the relevant sports governing body any information relating to:

- criminal or disciplinary proceedings commenced against the operator in connection with its operations;
- certain abnormal wagering activity or patterns;
- any potential breach of the relevant governing body's internal rules and codes of conduct pertaining to sports wagering;
- any other conduct that corrupted a wagering outcome of a sporting event for purposes of financial gain; and
- suspicious or illegal wagering activities.

The bill would require an interactive sports wagering operator to maintain the confidentiality of information provided by a sports governing body to the operator unless disclosure was required by the bill, TLC, other law, or court order. TLC, sports governing bodies, and operators would maintain the confidentiality of all reported information unless disclosure was required by the bill, other law, or court order, or as authorized by the relevant governing body. TLC would be required to maintain the confidentiality of all information provided by operators for compliance purposes unless disclosure was required by the bill, other law, or court order. TLC and an operator could disclose confidential information to another operator, a sports governing body, a sports wagering regulating entity, a law enforcement entity, or other party for the purpose of preventing or investigating conduct that corrupted the outcome of a sporting event.

Wagering revenue tax. The bill would establish taxes for sports wagering revenues. A tax would be imposed on the adjusted gross wagering revenue of an interactive sports wagering operator. An operator would be required to compute the operator's adjusted gross wagering revenue for a reporting period by determining the total amount of wagering revenue the operator received from all sports wagers authorized under the bill, excluding wagers placed using free bets or promotional

credits, during the period and subtracting amounts for the period, including:

- all cash or cash equivalents the operator paid as winnings to players;
- uncollectible receivables, not to exceed four percent of the amount of gross wagering revenue; and
- amounts returned to an authorized participant due to technical malfunction or due to concerns regarding the integrity of the wager or the sporting event.

TLC could increase the percentage of gross wagering revenue that an operator could deduct as uncollectible receivables on showing that a greater percentage was reasonable and warranted. An operator that had an adjusted gross wagering revenue for a reporting period that was less than zero could carry that amount forward and deduct the amount from the operator's adjusted gross wagering revenue for one or more of the succeeding 12 reporting periods before determining the amount of tax due for the applicable reporting period.

The rate of the tax imposed by the bill would be 10 percent of the adjusted gross wagering revenue for a reporting period. Such a tax would be due and payable to the comptroller on or before the 20th day of the month following the month in which the adjusted gross wagering revenue on which the tax was based was received.

A person required to pay such a tax would be required to file a tax report with the comptroller, due on the date the tax was due. The tax report would be required to include statements of certain amounts, including:

- the amount of the gross wagering revenue the person received from all sports wagers during the reporting period;
- the amount of the actual cost the person paid during the reporting period for any personal property the person distributed to a player as a result of a sports wager; and
- the total negative amount of adjusted gross wagering revenue that

was eligible to be deducted, the amount of the revenue the person actually deducted for the report in determining the tax due, and the remaining amount of the revenue that was eligible to be deducted on a subsequent report.

The bill would require the comptroller to administer, collect, and enforce the tax imposed under the bill in the manner the comptroller administered, collected, and enforced other state taxes.

The comptroller would deposit the net revenue from the collected taxes and excess fee revenue as follows:

- 2 percent to the problem gambling and addiction grant fund; and
- the remainder to the general revenue fund to be appropriated to the Texas Education Agency for use in providing property tax relief through the reduction of the state compression percentage.

The bill would exempt an operator from all excise taxes, license taxes, permit taxes, privilege taxes, amusement taxes, and occupation taxes imposed by the state or any political subdivision of the state.

Problem gambling and addiction grant fund. The bill would establish the problem gambling and addiction grant fund as an account in the general revenue fund, and money credited to the fund could be used only for awarding grants. From certain funds, TLC would administer a grant program to provide assistance for the direct treatment of persons diagnosed as suffering from pathological gambling and other addictive behaviors and funding for research regarding the impact of gambling on Texas residents. Research grants awarded under the bill could include grants for determining the effectiveness of education and prevention efforts on the prevalence of pathological gambling in the state.

Penalties. HB 1942 would establish certain criminal and civil penalties. A person would commit an offense if the person knowingly offered or engaged in sports wagering in violation of the bill. Such an offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine

of \$2,000).

A person also would commit an offense is a person knowingly attempted to suborn, collude, or otherwise conspire to impermissibly influence the outcome of any competition or aspect of a competition that was the subject of sports wagering. Such an offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The bill also would establish an offense if a person knowingly or willfully falsified, concealed, or misrepresented a material fact or knowingly or willfully made a false, fictitious, or fraudulent statement or representation in an application. Such an offense would by a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

If conduct constituting an offense under the bill also constituted a certain offense under the Penal Code, the actor could be prosecuted under either or both chapters.

If TLC determined that a permit holder intentionally violated any material provision of the bill or a TLC adopted rule, TLC could, after providing at least 15 days' notice and hearing, suspend or revoke the holder's permit and impose a monetary penalty of no more than \$10,000.

Penal Code. The Penal Code ch. 47 definition of "bet" would be revised to specify that an offer of a prize, award, or compensation to the participants in a fantasy sports contest would not constitute a bet.

The bill would make conforming changes to certain Penal Code sections to include authorized conduct under ch. 2005 as a defense to prosecution.

The changes in law made by the bill to the Penal Code would apply only to an offense committed on or after the bill's effective date.

Ch. 2005, established by the bill, would not apply to fantasy sports contests or pari-mutuel wagering on horse-racing or greyhound racing.

The bill would take effect January 1, 2024, only if the proposed constitutional amendment authorizing the Legislature to legalize sports wagering in the state was approved by the voters.

NOTES:

HB 1942 is the enabling legislation for HJR 102 by Leach, which is on the Constitutional Amendments Calendar for second reading consideration today.

According to the Legislative Budget Board (LBB), the bill would have a positive impact to general revenue related funds through the biennium of \$175,657,954. Additionally, the impact on state correctional populations or on the demand for state correctional resources cannot be determined due to a lack of data to estimate the prevalence of conduct outlined in the bill's provisions that would be subject to criminal penalties.