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The International Comparative Legal Guide to:

Gambling 2017

3rd Edition

A practical cross-border insight into gambling law

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Dror Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

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Global Legal Group Ltd.
59 Tanner Street
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USA – Texas

Jones Walker LLP

Nicole Duarte



1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Legal forms of gambling in Texas include the Texas Lottery (regulated by the Texas Lottery Commission), charitable bingo and raffles (also regulated by the Texas Lottery Commission), pari-mutuel wagering on horse and greyhound racing (regulated by the Texas Racing Commission), and one Indian casino (regulated under federal law).

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Texas law includes a broad prohibition against gambling, with limited delineated exceptions. See Tex. Penal Code sections 47.01 *et seq.* In particular, a “bet” is defined as “an agreement to win or lose something of value solely or partially by chance”, which encompasses many different forms of gambling, including cards, sports games, table games, slot machines, etc. Section 47.01(1). Social gambling is excepted from the general gambling prohibition – i.e., gambling in a private place where no person received any economic benefit other than personal winnings and, except for the advantage of skill or luck, the risks of losing and chances for winning were the same for all participants. Section 47.02 (b). Other exceptions include the expressly legalised forms of gambling, which are regulated by the following statutes: State Lottery, Texas Gov’t Code, Ch. 466; Charitable Bingo and Raffles, Texas Occupations Code Chs. 2001, 2002, and 2004; Pari-mutuel Betting on Horse and Greyhound Races, Texas Racing Act – Vernon’s Tex. Civil Statutes, Art. 179e *et seq.* Finally, gambling devices on an ocean-going vessel entering Texas territorial waters and ports are excepted if certain conditions are satisfied. Tex. Penal Code Section 47.09(b).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

In the context of licences with respect to pari-mutuel betting at horse and greyhound tracks, the racetrack licensing process includes a

“complete personal, financial, and business background check” and allows for the denial of a licence when anything is discovered that “might be detrimental to the public interest or the racing industry”. The commission “may” also refuse to grant a licence on several specific grounds, including (but not limited to) where the applicant has been convicted of a violation of the Racing Act or a felony involving moral turpitude, is not of good moral character or has a bad reputation in the community where he resides, or has or is engaged in activities that the committee finds are detrimental to the best interest of the public and the sport of horse or greyhound racing. Residency requirements also apply with respect to greyhound tracks and class 1 and 2 horse racing tracks.

With respect to charitable bingo, there are different rules with respect to who may apply for a licence depending upon the nature of the licence being sought. To obtain a licence to conduct bingo operations, the applicant must be an “authorised organisation” – i.e., a religious society, nonprofit organisation, fraternal organisation, veterans organisation or volunteer fire/emergency medical services provider that has existed for three years. Commercial lessor licences cannot be issued to persons convicted of criminal fraud or gambling offenses, public officers, creditors of an authorised organisation’s licence fees, distributors or manufacturers, foreign corporations, or non-resident individuals. Manufacturer or distributor licences cannot be issued to persons convicted of criminal fraud or a gambling offense, persons engaging in bingo operations, persons who were or are professional gamblers or gambling promoters, public officers, owners/officers/agents of licensed commercial lessors, or persons whose similar licences were revoked in another state within the past year; further, a manufacturing licence cannot be issued to someone required to be licensed as a distributor, and *vice versa*.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Licences are required with respect to conducting betting at horse and greyhound tracks. Texas law provides for several different “classes” of horse racing tracks, and the number of racing days allowed depends upon the class at issue. Only three “Class 1” horse racing tracks, which are granted an unlimited number of racing days, are allowed in the state’s largest metropolitan areas; three such Class 1 tracks are presently licensed and operating. Class 2 licences authorise no more than 60 racing days per year, while Class 3 and Class 4 licences involve fewer racing days and events like county fairs. With respect to greyhound racing, Texas law allows

for only three tracks in counties bordering on the Gulf of Mexico. In addition to the racetrack itself, certain individuals must also obtain licences from the Racing Commission, including certain racetrack employees and others not employed by the racetrack licensee who work in certain positions related to pari-mutuel betting.

With respect to charitable bingo, licences are required with respect to conducting bingo operations, leasing property to licensed bingo operators, and manufacturing and distributing bingo supplies.

2.3 What restrictions are placed upon any licensee?

With respect to horse and greyhound racing licences, the Racing Commission may condition the licence upon observance of its rules, which are subject to change from time to time. Commission rules address issues such as inappropriate and unsafe conditions, approval of plans and specifications for construction, records maintenance, etc.

2.4 What is the process of applying for any gambling licence or regulatory approval?

With respect to horse and greyhound racing licences, the application process involves the payment of the application fee along with the submittal of a complete application on the form prescribed by the Racing Commission. The Commission has the discretion to require the applicant (or licensee) for a racetrack licence to post a bond to ensure compliance with the Racing Act and Commission's rules.

With respect to Charitable Bingo licences, the application process involves submittal of a complete application on the specific form prescribed by the Texas Lottery Commission. A \$10,000 bond is required with respect to manufacturer licence applicants.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

With respect to horse and greyhound racetrack licences, an "active" licence (involving live racing) is effective until the licence is designated "inactive" or is surrendered, suspended, or revoked. An "inactive" licence is renewable yearly. Individual occupational licences can have varying terms, generally one to three years.

Charitable bingo licences of all categories are generally effective for one year, though in some situations a two-year licence can be granted upon the payment of two years' fees.

2.6 By product, what are the key limits on providing services to customers? Please include in this answer the material promotion and advertising restrictions.

With respect to charitable bingo, a manufacturer may not sell or supply to a person in the state or for use in the state bingo cards, boards, sheets, pads, or other supplies, or equipment designed to be used in playing bingo, or engage in any intrastate activity involving those items without a licence. A distributor may not sell, distribute, or supply bingo equipment or supplies for use in bingo in the state without a licence.

Paid advertising of charitable bingo is prohibited, but advertising may be donated in limited circumstances.

2.7 What are the tax and other compulsory levies?

Horse and greyhound racing licences involve annual fees, statutorily described deductions and breakage from the pool, and city and county fees.

Charitable bingo licences involve annual fees. There is also a 5% bingo prize tax.

2.8 What are the broad social responsibility requirements?

Both the Texas Racing Commission and the Texas Lottery Commission have the power to enact rules to address issues relating to controlling the gambling activities that they regulate. In addition, each commission has broad authority and is directed to exercise strict control over regulated activities and "vigorous enforcement" of statutes and rules governing the regulated activities.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Rules specify limits on the placement of ATMs at horse and greyhound racetracks.

However, Texas does not specifically regulate the use of virtual currencies.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Although Texas law does not directly address the legality of online gambling, the Texas Attorney General appears to take the position that online gambling activity is prohibited.

3.2 What other restrictions have an impact on online supplies?

Although Texas law does not directly address the legality of online gambling, the Texas Attorney General appears to take the position that online gambling activity is prohibited.

3.3 What terminal/machine-based gaming is permitted and where?

Electronic gaming is permitted at horse and greyhound racetracks so long as the individual betting is present within the "enclosure" of the facility.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Liable persons include persons: making prohibited “bets”; operating or participating in the earnings of a gambling place; bookmaking; setting up or promoting a lottery; keeping a gambling place; communicating gambling information with the intent to further gambling or installing equipment for that purpose; and owning, manufacturing, transferring or possessing gambling equipment.

4.2 What is the approach of authorities to unregulated supplies?

Texas takes an aggressive approach against prohibited gambling and gambling devices.

4.3 Do other non-national laws impact upon liability and enforcement?

No, they do not.

4.4 Are gambling debts enforceable in your jurisdiction?

No, they are not.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

Various gambling-related bills are introduced in the Legislature every year, but no significant bill was successful during the 2016 session.



Nicole Duarte

Jones Walker LLP
1001 Fannin Street, Suite 2450
Houston, TX 77002
USA

Tel: +1 713 437 1800
Email: nduarte@joneswalker.com
URL: www.joneswalker.com

Nicole Duarte is a partner in the Commercial Litigation Practice Group of Jones Walker LLP. Her practice involves many areas of commercial litigation and regulatory work, including gaming law. She has represented bingo manufacturing clients with respect to licensing proceedings before the Texas Lottery Commission and has advised clients with respect to general gaming laws and Indian-operated casinos.



Since its inception in 1937, Jones Walker LLP has grown over the past several decades in size and scope to become one of the largest law firms in the United States. The firm serves local, regional, national, and international business interests in a wide range of markets and industries. Today, the firm has approximately 375 attorneys in Alabama, Arizona, the District of Columbia, Florida, Georgia, Louisiana, Mississippi, New York, Ohio and Texas.

Jones Walker's gaming practice, the largest in the Southeastern United States, provides full-spectrum legal counsel to clients on gaming law. The firm represents all participants in the industry, including casinos, tribes, product manufacturers and suppliers, pari-mutuels, sweepstakes and charities. The firm also represents other parties – such as investors, lenders and vendors – that have gaming-related interests.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

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