

## BILL ANALYSIS

Senate Research Center

H.B. 1138  
By: Flores (Armbrister)  
State Affairs  
5/11/2005  
Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The House Licensing and Administrative Procedures Committee studied charitable bingo following the 78th Legislature, Regular Session, 2003. H.B. 1138 incorporates the committee's recommendations through changes to the Bingo Enabling Act (BEA), as well as making other changes to the act.

H.B. 1138 resolves problems with the implementation of H.B. 2519, enacted by the 78th Legislature, improves the reporting of charitable bingo's performance, reforms charitable bingo accounting and business practices, and eliminates obsolete or unneeded provisions of the BEA.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 10 (Section 2001.451, Occupations Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.002, Occupations Code, by amending Subdivision (24) and adding Subdivision (13-a), to define "instant bingo" and redefine "pull-tab bingo."

SECTION 2. Amends Section 2001.059, Occupations Code, by amending Subsection (a) and adding Subsection (g), as follows:

(a) Authorizes an officer, primary operator, or business representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder, rather than a person, to request from the Texas Lottery Commission (commission) an advisory opinion regarding compliance with this chapter and the rules of the commission.

(g) Authorizes the commission to refuse to issue an advisory opinion under this section on a matter that the commission knows to be in active litigation.

SECTION 3. Amends Subchapter B, Chapter 2001, Occupations Code, by adding Section 2001.060, as follows:

Sec. 2001.060. REPORTING. (a) Requires the commission, on or before June 1 of each even-numbered year, to prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over charitable bingo a report stating certain information for each of the preceding two calendar years.

(b) Defines "adjusted gross receipts" and "net proceeds."

(c) Requires the commission, for purposes of Subsection (a)(3), to determine total net proceeds in a manner that does not reduce gross receipts by the amount of rent paid by a licensed authorized organization to another licensed authorized organization for rental of bingo premises if the other organization pays rent for the premises to a licensed commercial lessor.

SECTION 4. Amends Section 2001.102(b), Occupations Code, to require an application for a license to conduct bingo to include certain modified information.

SECTION 5. Amends Section 2001.105(b), Occupations Code, to prohibit the commission from issuing a license to an authorized organization to conduct bingo if an officer or director of the organization has been convicted of certain offenses if less than 10 years have elapsed since the termination of a sentence served for the offense.

SECTION 6. Amends Section 2001.106, Occupations Code, by deleting the requirements that a license to conduct bingo include the specific purposes to which the net proceeds of bingo are to be devoted and a statement of whether a prize is to be offered and the amount of any authorized prize.

SECTION 7. Amends Section 2001.154(a), Occupations Code, by deleting a foreign corporation or other foreign legal entity, an individual who is not a resident of this state, a corporation or other legal entity owned or controlled by certain entities, and certain corporations or other legal entities from the list of entities to whom the commission is prohibited from issuing or renewing a commercial lessor license.

SECTION 8. Amends Section 2001.306(c), Occupations Code, by deleting the requirement that a holder of a license to conduct bingo must surrender its original license before the license holder changes the location at which it conducts bingo.

SECTION 9. Amends Section 2001.313, Occupations Code, by amending Subsection (d) and adding Subsection (h), as follows:

(d) Makes a conforming change.

(h) Authorizes a licensed authorized organization to employ a person who is not on the registry established by this section as an operator, manager, cashier, usher, caller, or salesperson on a provisional basis for a period not to exceed 14 days if the person is awaiting the results of a background check by the commission. Prohibits a person who has been removed from the registry under Subsection (e) and has not subsequently been listed on the registry under Subsection (g) from being employed under this subsection.

SECTION 10. Amends Section 2001.451, Occupations Code, by amending Subsections (a), (c), (d), and (e), and adding Subsections (g), (h), (i), and (j), as follows:

(a) Requires a licensed authorized organization to establish and maintain one regular checking account designated as the organization's "bingo account." Deletes existing text authorizing the organization to maintain an interest-bearing savings account designated as the "bingo savings account."

(c) Authorizes a licensed authorized organization to transfer, rather than lend, money from its general fund or other account to the organization's bingo account or to the bingo account of a unit of which the organization is a member under Subchapter F1 (Unit Accounting), if applicable, if certain circumstances apply.

(d) Makes a conforming change.

(e) Prohibits a licensed authorized organization, except as permitted by Subsection (c) of this section and by Section 2001.453(2) from transferring gross receipts derived from the conduct of bingo to another account maintained by the organization.

(g) Requires the bingo operations of a licensed authorized organization to result in net proceeds over the organization's license period, except if the organization has a two-year license, the organization's bingo operations are required to result in net proceeds over each 12-month period that ends on the anniversary date of the issuance of the two-year license.

(h) Authorizes a licensed authorized organization or a unit of licensed authorized organizations, except as provided by Subsection (i), to retain operating capital in the organization's or unit's bingo account in an amount equal to the organization's or unit's

actual average bingo expenses per quarter based on the preceding license period, excluding prizes paid, but not to exceed a total of \$50,000 for a single organization or \$50,000 for each member of a unit.

(i) Requires the commission to adopt rules permitting a licensed authorized organization to retain a maximum amount of operating capital in the bingo account in excess of the amount provided by Subsection (h) if the organization meets certain requirements.

(j) Authorizes a licensed authorized organization to apply to the commission for a waiver of the requirements of this section and Section 2001.457. Authorizes the commission to grant the waiver upon a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. Sets forth requirements for an organization applying for a waiver to establish good cause.

SECTION 11. Amends Section 2001.452(c), Occupations Code, to require a licensed authorized organization to account, rather than keep and account, for all checks and withdrawal slips, including voided checks and withdrawal slips.

SECTION 12. Amends Section 2001.453, Occupations Code, by deleting text relating to a licensed authorized organizations bingo savings account.

SECTION 13. Amends Section 2001.457(a), (b), and (c), Occupations Code, as follows:

(a) Requires a licensed authorized organization, before the end of each quarter, to disburse all or the organization's net proceeds from the preceding quarter, other than amounts retained under Section 2001.451, as provided by this subchapter. Deletes existing text specifying amounts to be disbursed for charitable purposes.

(b) Requires the commission in applying appropriate sanctions, if a licensed authorized organization fails to meet the requirements of Subsection (a) for a quarter, to consider whether, taking into account the amount required to be disbursed during that quarter and the three preceding quarters, the organization has disbursed a total amount sufficient to have met the disbursement requirement for that quarter and the three preceding quarters combined. Deletes existing text specifying that disbursements be made for charitable purposes.

(c) Requires a licensed authorized organization that has ceased to conduct bingo for any reason and that has unexpended bingo funds to disburse those funds as provided by this subchapter before the end of the next calendar quarter after the calendar quarter in which the organization ceases to conduct bingo. Deletes existing text specifying that disbursements be made for charitable purposes.

SECTION 14. Amends Section 2001.502, Occupations Code, to require a licensed authorized organization to collect from a person who wins a bingo prize of more than \$5 a fee in the amount of five percent of the amount or value of the prize and to remit a fee in the amount of five percent for all prizes awarded.

SECTION 15. Amends Sections 2001.505(a) and (b), Occupations Code, as follows:

(a) Deletes existing text requiring a licensed authorized organization conducting bingo to submit a quarterly report to the comptroller of public accounts.

(b) Deletes existing text requiring a license holder to furnish a copy of each report to the appropriate governing body.

SECTION 16. Amends Section 2001.514(b), Occupations Code, prohibit the amount of the bond or other security set by the commission from exceeding the amount, rather than three times the amount, due according to the license holder's average quarterly reports.

SECTION 17. Repealer: (1) Section 2001.002(10) (defines "executive director");

- (2) Section 2001.152(c) (relating to eligibility for a commercial lessor license);
- (3) Section 2001.406(c) (relating to rent for premises);
- (4) Sections 2001.410(b) and (d) (relating to certain details of a pull-tab ticket sold by a pull-tab dispenser);
- (5) Section 2001.417 (Toll-Free Help);
- (6) Section 2001.457(d) (defines "adjusted gross receipts" and "cost of goods purchased by an organization"); and
- (7) Section 2001.505(c) (requiring the commission to make a report of expenses available to the comptroller), Occupations Code.

SECTION 18. Requires the Texas Lottery Commission to adopt rules as required by Section 2001.451, Occupations Code, as amended by this Act, not later than April 1, 2006.

SECTION 19. (a) Requires a licensed authorized organization, if on or after the effective date of this Act an organization has a balance in its bingo account of more than the maximum amount of operating capital allowed by Chapter 2001, Occupations Code, as amended by this Act, to distribute the funds in excess of the organization's maximum operating capital allowed by Chapter 2001, Occupations Code, as amended by this Act, by certain deadlines.

(b) Authorizes the Texas Lottery Commission to waive the requirements of Subsection (a) of this section on application and a showing of good cause by a licensed authorized organization.

(c) Provides that this section expires January 1, 2009.

SECTION 20. Effective date: October 1, 2005.