

BILL ANALYSIS

C.S.H.B. 1138

By: Flores

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The House Licensing and Administrative Procedures Committee studied charitable bingo following the 78th Legislature's Regular Session. C.S.H.B. 1138 incorporates the Committee's recommendations through changes in the Bingo Enabling Act (BEA) (Chapter 2001, Occupations Code), as well as making other changes to the Act.

C.S.H.B. 1138 resolves problems with the implementation of H.B. 2519, 78 (R), 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

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 10 and SECTION 18 (Section 2001.451, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.002, Occupations Code, by defining instant bingo and striking the reference to instant bingo from the definition of "pull-tab bingo."

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

(a) Authorizes specific persons employed or retained by a license holder to request an advisory opinion from the commission regarding compliance with this chapter and the rules of the commission.

(g) Authorizes the commission to refuse to issue an advisory opinion 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 to provide a biennial report to the Governor, Lt. Governor, Speaker and the chairs of the House and Senate Committees with jurisdiction over charitable bingo, and specifies the information to be included in the report.

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

(c) Requires the commission to determine the total net proceeds in a specified manner.

SECTION 4. Amends Section 2001.102 (b), Occupations Code, by requiring that the director's names and addresses be included on an application, and striking Subsections (5), (11), and (12), requiring that an application include: the capacity for public assembly in an applicant's premises, a statement that a copy of the application has been sent to the appropriate governing body, and the names and addresses of employees, the nature of their work, and their criminal background.

SECTION 5. Amends Section 2001.105 (b), Occupations Code, prohibits the commission from providing a license to an organization if a director of the organization has been convicted of certain criminal offenses.

SECTION 6. Amends Section 2001.106, Occupations Code, by striking Subsections (4) and (5), requiring a license to conduct bingo to include: to what purposes the proceeds are to be devoted and a statement of whether a prize is to be offered and the amount of any prize.

SECTION 7. Amends Section 2001.154 (a), Occupations Code, by striking Subsection (6) , (7), (8), and (9), which serve to prohibit the licensing or renewal of licenses by the commission to foreign corporations, non residents of the state, publicly traded corporations, or entities owned or controlled by the former three parties mentioned.

SECTION 8. Amends Section 2001.306 (c), Occupations Code, by striking language prohibiting a license holder from changing locations until it has surrendered its original license.

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

(d) Provides that this provision applies, except as provided by Subsection (h).

(h) Authorizes a charity to hire, on a provisional basis, a person who is not listed on the registry. Prohibits hiring certain classes of persons on the provisional basis.

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

(a) Strikes language authorizing organizations to keep an interest-bearing savings account. Makes conforming changes.

(c) Authorizes an organization to transfer, rather than lend, money from its general fund or other account to the organization's bingo account if certain provisions apply.

(d) Prohibits an organization from commingling receipts from the conduct of bingo with other funds of the organization, except as provided in Subsection (c).

(e) Prohibits an organization from transferring receipts from the conduct of bingo to another organization account, except as provided in Subsection (c) and Section 2001.453(2), rather than Sections 2001.453(a) (2) and (3).

(g) Requires an organization to have net proceeds during its license period or in each year of a two year license period.

(h) Authorizes a licensed organization to retain operating capital in the organization's account, sets regulations and establishes a limit.

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

(j) Authorizes an organization to apply to the commission for a waiver of the requirements of this section and Section 2001.457 under certain circumstances.

SECTION 11. Amends Section 2001.452(c), Occupations Code, by striking language requiring licensed organizations to keep copies of certain banking documents.

SECTION 12. Amends Section 2001.453, Occupations Code, by making conforming changes as mentioned in Section 2001.451.

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

(a) Requires a licensed organization to disburse all of its net proceeds from its bingo account after each quarter. Strikes language regulating the disbursement amount to be greater than 35 percent.

(b) Requires the commission to consider, in the instance the licensed organization fails to meet the disbursement requirements, the previous disbursement amounts of the organization and whether they are sufficient to meet the unpaid amount.

(c) Requires a licensed organization that has ceased to conduct bingo to disburse funds as provided in this subchapter.

SECTION 14. Amends Section 2001.502, Occupations Code, by requiring that prizes of \$5 or more are subject to a fee in the amount of five percent of the prize value and further requires the organization to remit an amount equal to the prize fee that has been collected for all prizes awarded.

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

(a) Strikes the requirement for a licensed organization to send a quarterly report to the comptroller containing certain financial information.

(b) Strikes the requirement for a license holder to furnish a copy of each report to the appropriate governing body.

SECTION 16. Amends Section 2001.514(b), Occupations Code, by striking language requiring the bond amount not to exceed three times the amount due according to the license holder's average quarterly reports.

SECTION 17. Amends Chapter 2001, Occupations Code, by repealing the following sections: Section 2001.002 (10); Section 2001.152(c); Section 2001.155; Section 2001.305; Section 2001.406(c); Section 2001.410(b) and (d); Section 2001.417; Section 2001.457(d); and Section 2001.505(c).

SECTION 18. Requires the Texas Lottery Commission to adopt rules as required by Section 2001.451, Occupations Code, as amended by this Act, no later than April 1, 2006.

SECTION 19. (a) Requires that a licensed organization distribute funds that exceed the maximum amount of operating capitol allowed by this chapter no later than what the transition plan outlines.

(b) Authorizes the Texas Lottery Commission to waive the compliance dates under certain circumstances.

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

SECTION 20. Effective date: October 1, 2005.

EFFECTIVE DATE

October 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds a definition of instant bingo that includes bingo games currently authorized by commission rules.

The substitute modifies the original by altering the biennial report requirements to specifically require the adjusted gross receipts and the percentage of difference between the adjusted gross receipts and the net proceeds of an organization's bingo operations. The substitute defines "adjusted gross receipts" and "net proceeds."

The substitute differs from the original by providing that a charity with a two-year license must earn net proceeds from bingo in each year of the two-year license period and omits the provision in the original bill that allows charities with two-year licenses to pay half the license fee at the start and half of the fee at the mid-point of the license period.

The substitute modifies the original by increasing the number of people associated with charities who must pass criminal background checks by adding that directors must also undergo checks and eliminates additional items of information the charities must provide with an application for a license to conduct bingo and that must be included in the license itself.

The substitute modifies the original by striking a provision requiring an organization to retain paper copies of financial documents.

C.S.H.B. 1138 eliminates requirements in current law that certain information must be provided to the comptroller and local governments.

The substitute modifies the original by adding new language to allow prize fees to be collected only on prizes of \$5 or more and to remit prize fees on all prizes awarded.

The substitute differs from the original by striking language setting the bond amount as high as three times the amount according to quarterly reports. The amount is lowered to an amount not to exceed the amount due according to the license holder's quarterly reports.

C.S.H.B. 1138 repeals additional provisions of the Bingo Enabling Act that have been executed or are obsolete or unnecessary in light of other changes in the Act.

The substitute changes the date by which the Texas Lottery Commission must adopt certain rules to April 1, 2006 and deletes application of law provision.

The substitute changes the effective date to October 1, 2005.