

By: Flores, Hope

H.B. No. 1138

A BILL TO BE ENTITLED

AN ACT

relating to the operation and regulation of charitable bingo.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2001.002, Occupations Code, is amended by amending Subdivision (24) and adding Subdivision (13-a) to read as follows:

(13-a) (A) "Instant bingo" means a form of bingo using:

(i) combinations of numbers, letters, or symbols, some of which have been designated in advance as prize winners; and

(ii) a finite number of prize winners contained within a predetermined set of chances to win.

(B) Instant bingo includes pull-tab bingo, event tickets, sign-up boards, tip boards, coin boards, and instant tickets. Instant bingo does not include the use of electronic devices to conduct the games described by Paragraph (A).

(24) "Pull-tab bingo" means a form of bingo played using tickets with perforated break-open tabs, made of paper or paper products, the face of which is covered or otherwise hidden from view to conceal numbers, letters, or symbols, some of which have been designated in advance as prize winners. The term includes games commonly known as [~~"instant bingo" and~~] "break-open bingo."

SECTION 2. Section 2001.059, Occupations Code, is amended by amending Subsection (a) and adding Subsection (g) to read as

1 follows:

2 (a) An officer, primary operator, or business
3 representative of a license holder or an attorney, accountant, or
4 bookkeeper employed or retained by a license holder [~~A person~~] may
5 request from the commission an advisory opinion regarding
6 compliance with this chapter and the rules of the commission.

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

10 SECTION 3. Subchapter B, Chapter 2001, Occupations Code, is
11 amended by adding Section 2001.060 to read as follows:

12 Sec. 2001.060. REPORTING. (a) On or before June 1 of each
13 even-numbered year, the commission shall prepare and deliver to the
14 governor, the lieutenant governor, the speaker of the house of
15 representatives, and the chairs of the standing committees of the
16 senate and house of representatives with primary jurisdiction over
17 charitable bingo a report stating for each of the preceding two
18 calendar years:

19 (1) the total amount of adjusted gross receipts
20 reported by licensed authorized organizations from their bingo
21 operations;

22 (2) the net proceeds reported by licensed authorized
23 organizations from their bingo operations; and

24 (3) the percentage that the net proceeds of the
25 licensed authorized organizations bear to the adjusted gross
26 receipts of the organizations earned from their bingo operations.

27 (b) For purposes of Subsection (a)(3):

1 (1) "adjusted gross receipts" means the receipts
2 remaining after prizes are paid, excluding prize fees collected
3 from bingo players; and

4 (2) "net proceeds" has the meaning assigned by Section
5 2001.002(18)(A).

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

12 SECTION 4. Section 2001.102(b), Occupations Code, is
13 amended to read as follows:

14 (b) The application must include:

15 (1) the name and address of the applicant;

16 (2) the names and addresses of the applicant's
17 officers and directors;

18 (3) the address of the premises where and the time when
19 the applicant intends to conduct bingo under the license sought;

20 (4) the name and address of the licensed commercial
21 lessor of the premises, if the applicant intends to lease premises
22 to conduct bingo from a person other than an authorized
23 organization;

24 (5) ~~[the capacity or potential capacity for public~~
25 ~~assembly in any premises owned or occupied by the applicant,~~

26 ~~[(6)]~~ the amount of rent to be paid or other
27 consideration to be given, directly or indirectly, for each

1 occasion for use of the premises of another licensed authorized
2 organization or for use of the premises of a licensed commercial
3 lessor;

4 (6) [~~(7)~~] all other items of expense intended to be
5 incurred or paid in connection with conducting, promoting, and
6 administering bingo and the names and addresses of the persons to
7 whom, and the purposes for which, the expenses are to be paid;

8 (7) [~~(8)~~] the specific purposes to and the manner in
9 which the net proceeds of bingo are to be devoted;

10 (8) [~~(9)~~] a statement that the net proceeds of bingo
11 will go to one or more of the authorized charitable purposes under
12 this chapter;

13 (9) [~~(10)~~] a designation of one or more active members
14 of the applicant organization under whom bingo will be conducted
15 accompanied by a statement signed by each designated member stating
16 that the member will be responsible for the conduct of bingo under
17 the terms of the license and this chapter; and

18 (10) [~~(11)~~] ~~a statement that a copy of the application~~
19 ~~has been sent to the appropriate governing body;~~

20 [~~(12)~~] ~~the name and address of each person who will work~~
21 ~~at the proposed bingo occasion, the nature of the work to be~~
22 ~~performed, and a statement as to whether the person has been~~
23 ~~convicted of a felony, a gambling offense, criminal fraud, or a~~
24 ~~crime of moral turpitude; and~~

25 [~~(13)~~] sufficient facts relating to the applicant's
26 incorporation and organization to enable the commission to
27 determine whether the applicant is an authorized organization.

1 SECTION 5. Section 2001.105(b), Occupations Code, is
2 amended to read as follows:

3 (b) The commission may not issue a license to an authorized
4 organization to conduct bingo if an officer or director of the
5 organization has been convicted of a felony, criminal fraud, a
6 gambling or gambling-related offense, or a crime of moral turpitude
7 if less than 10 years has elapsed since the termination of a
8 sentence, parole, mandatory supervision, or community supervision
9 served for the offense.

10 SECTION 6. Section 2001.106, Occupations Code, is amended
11 to read as follows:

12 Sec. 2001.106. FORM AND CONTENTS OF LICENSE. A license to
13 conduct bingo must include:

- 14 (1) the name and address of the license holder;
- 15 (2) the names and addresses of the member or members of
16 the license holder under whom the bingo will be conducted; and
- 17 (3) an indication of the premises where and the time
18 when bingo is to be conducted[+
19 ~~[(4) the specific purposes to which the net proceeds~~
20 ~~of bingo are to be devoted, and~~
21 ~~[(5) a statement of whether a prize is to be offered~~
22 ~~and the amount of any authorized prize].~~

23 SECTION 7. Section 2001.154(a), Occupations Code, is
24 amended to read as follows:

25 (a) The commission may not issue a commercial lessor license
26 to or renew a commercial lessor license of:

- 27 (1) a person convicted of a felony, criminal fraud, a

1 gambling or gambling-related offense, or a crime of moral turpitude
2 if less than 10 years has elapsed since termination of a sentence,
3 parole, mandatory supervision, or community supervision served for
4 the offense;

5 (2) a public officer who receives any consideration,
6 direct or indirect, as owner or lessor of premises offered for
7 conducting bingo;

8 (3) a person who extends credit to, loans money to, or
9 pays or provides for the payment of license fees for an authorized
10 organization;

11 (4) a distributor or manufacturer; or

12 (5) a person in which a person covered by Subdivision
13 (1), (2), (3), or (4) or a person married or related in the first
14 degree by consanguinity or affinity, as determined under Chapter
15 573, Government Code, to one of those persons has greater than a 10
16 percent proprietary, equitable, or credit interest or in which one
17 of those persons is active or employed[+]

18 [~~(6) a foreign corporation or other foreign legal~~
19 ~~entity,~~

20 [~~(7) an individual who is not a resident of this state,~~

21 [~~(8) a corporation or other legal entity owned or~~
22 ~~controlled by:~~

23 [~~(A) a foreign corporation, or~~

24 [~~(B) an individual who is not a resident of this~~
25 ~~state, or~~

26 [~~(9) a corporation or other legal entity:~~

27 [~~(A) whose shares are publicly traded, or~~

1 [~~(B) owned or controlled by a corporation whose~~
2 ~~shares are publicly traded~~].

3 SECTION 8. Section 2001.306(c), Occupations Code, is
4 amended to read as follows:

5 (c) The holder of a license to conduct bingo may not change
6 the location at which it conducts bingo until it has [+
7 [~~(1) surrendered its original license, and~~
8 [~~(2)~~] received an amended license.

9 SECTION 9. Section 2001.313, Occupations Code, is amended
10 by amending Subsection (d) and adding Subsection (h) to read as
11 follows:

12 (d) Except as provided by Subsection (h), a [A] person who
13 is not listed on the registry established by this section may not
14 act as an operator, manager, cashier, usher, caller, or salesperson
15 for a licensed authorized organization.

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

24 SECTION 10. Section 2001.451, Occupations Code, is amended
25 by amending Subsections (a), (c), (d), and (e) and adding
26 Subsections (g), (h), (i), and (j) to read as follows:

27 (a) A licensed authorized organization shall establish and

1 maintain one regular checking account designated as the
2 organization's "bingo account." [~~The organization may also~~
3 ~~maintain an interest-bearing savings account designated as the~~
4 ~~"bingo savings account."~~]

5 (c) A licensed authorized organization may transfer [~~lend~~]
6 money from its general fund or other account to the organization's
7 [~~its~~] bingo account or to the bingo account of a unit of which the
8 organization is a member under Subchapter I-1, if applicable, if:

9 (1) the balance in the bingo account to which the funds
10 are transferred is less than the maximum amount permitted by this
11 section; and

12 (2) the organization notifies [~~requests and receives~~
13 ~~the prior approval of~~] the commission of the transfer not later than
14 the 10th working day after the date of the transfer. [~~Except as~~
15 ~~provided by this section, no other funds may be deposited in the~~
16 ~~bingo account.~~]

17 (d) Except as permitted by Subsection (c), a [A] licensed
18 authorized organization may not commingle gross receipts derived
19 from the conduct of bingo with other funds of the organization.

20 (e) Except as permitted by Subsection (c) of this section
21 and by Section 2001.453(2) [~~Sections 2001.453(a)(2) and (3)~~], a
22 [~~the~~] licensed authorized organization may not transfer gross
23 receipts derived from the conduct of bingo to another account
24 maintained by the organization.

25 (g) The bingo operations of a licensed authorized
26 organization must result in net proceeds over the organization's
27 license period, except if the organization has a two-year license,

1 the organization's bingo operations must result in net proceeds
2 over each 12-month period that ends on the anniversary date of the
3 issuance of the two-year license.

4 (h) Except as provided by Subsection (i), a licensed
5 authorized organization or a unit of licensed authorized
6 organizations may retain operating capital in the organization's or
7 unit's bingo account in an amount equal to the organization's or
8 unit's actual average bingo expenses per quarter based on the
9 preceding license period, excluding prizes paid, but not to exceed
10 a total of \$50,000 for a single organization or \$50,000 for each
11 member of a unit.

12 (i) The commission shall adopt rules permitting a licensed
13 authorized organization to retain a maximum amount of operating
14 capital in the bingo account in excess of the amount provided by
15 Subsection (h) if the organization:

16 (1) has conducted bingo for less than one year;

17 (2) experiences circumstances beyond the control of
18 the organization, including force majeure, that necessitate an
19 increase in operating capital; or

20 (3) furnishes the commission with a credible business
21 plan for the conduct of bingo or for the organization's existing or
22 planned charitable purposes that an increase in operating capital
23 will reasonably further.

24 (j) A licensed authorized organization may apply to the
25 commission for a waiver of the requirements of this section and
26 Section 2001.457. The commission may grant the waiver upon a
27 showing of good cause by the organization that compliance with this

1 section and Section 2001.457 is detrimental to the organization's
2 existing or planned charitable purposes. An organization applying
3 for a waiver establishes good cause by:

4 (1) providing credible evidence of circumstances
5 beyond the control of the organization, including force majeure; or

6 (2) furnishing the commission with a credible business
7 plan for the organization's conduct of bingo or the organization's
8 existing or planned charitable purposes.

9 SECTION 11. Section 2001.452(c), Occupations Code, is
10 amended to read as follows:

11 (c) A licensed authorized organization shall [~~keep and~~]
12 account for all checks and withdrawal slips, including voided
13 checks and withdrawal slips.

14 SECTION 12. Section 2001.453, Occupations Code, is amended
15 to read as follows:

16 Sec. 2001.453. AUTHORIZED USES OF BINGO ACCOUNT. [~~(a)~~] A
17 licensed authorized organization may draw a check on its bingo
18 account only for:

19 (1) the payment of necessary and reasonable bona fide
20 expenses, including compensation of personnel, as permitted under
21 Section 2001.458 incurred and paid in connection with the conduct
22 of bingo; or

23 (2) the disbursement of net proceeds derived from the
24 conduct of bingo as provided by this subchapter [~~to charitable~~
25 ~~purposes; or~~

26 [~~(3) the transfer of net proceeds derived from the~~
27 ~~conduct of bingo to the organization's bingo savings account~~

1 ~~pending a disbursement to a charitable purpose.~~

2 ~~[(b) A licensed authorized organization must make the~~
3 ~~disbursement of net proceeds on deposit in the bingo savings~~
4 ~~account to a charitable purpose by transferring the intended~~
5 ~~disbursement back into the organization's bingo account and then~~
6 ~~withdrawing an amount by a check drawn on the bingo account].~~

7 SECTION 13. Sections 2001.457(a), (b), and (c), Occupations
8 Code, are amended to read as follows:

9 (a) Before the end of each quarter, a licensed authorized
10 organization shall disburse all ~~[for charitable purposes an amount~~
11 ~~not less than 35 percent]~~ of the organization's net proceeds
12 ~~[adjusted gross receipts]~~ from the preceding quarter, other than
13 amounts retained under Section 2001.451, as provided by this
14 subchapter ~~[less the amount of authorized expenses not to exceed~~
15 ~~six percent of the gross receipts].~~

16 (b) If a licensed authorized organization fails to meet the
17 requirements of Subsection (a) ~~[this section]~~ for a quarter, the
18 commission in applying appropriate sanctions shall ~~[may]~~ consider
19 whether, taking into account the amount required to be disbursed
20 ~~[distributed]~~ during that quarter and the three preceding quarters
21 ~~[and the charitable distributions for each of those quarters]~~, the
22 organization has disbursed ~~[distributed]~~ a total amount sufficient
23 to have met the disbursement ~~[35 percent]~~ requirement for that
24 quarter and the three preceding quarters combined.

25 (c) A licensed authorized organization that has ceased to
26 conduct bingo for any reason and that has unexpended bingo funds
27 shall disburse those funds as provided by this subchapter ~~[to~~

1 ~~charitable purposes]~~ before the end of the next calendar quarter
2 after the calendar quarter in which the organization ceases to
3 conduct bingo.

4 SECTION 14. Section 2001.502, Occupations Code, is amended
5 to read as follows:

6 Sec. 2001.502. PRIZE FEE. A licensed authorized
7 organization shall collect from a person who wins a bingo prize of
8 more than \$5 a fee in the amount of five percent of the amount or
9 value of the prize and shall remit a fee in the amount of five
10 percent for all prizes awarded.

11 SECTION 15. Sections 2001.505(a) and (b), Occupations Code,
12 are amended to read as follows:

13 (a) A licensed authorized organization conducting bingo
14 shall submit quarterly to the commission [~~and to the comptroller~~] a
15 report under oath stating:

16 (1) the amount of the gross receipts derived from
17 bingo;

18 (2) each item of expense incurred or paid;

19 (3) each item of expenditure made or to be made, the
20 name and address of each person to whom each item has been paid or is
21 to be paid, and a detailed description of the merchandise purchased
22 or the services rendered;

23 (4) the net proceeds derived from bingo;

24 (5) the use to which the proceeds have been or are to
25 be applied; and

26 (6) a list of prizes offered and given, with their
27 respective values.

1 (b) A license holder shall~~+~~
2 [~~(1)~~] maintain records to substantiate the contents of
3 each report~~+, and~~
4 [~~(2)~~ ~~furnish a copy of each report to the appropriate~~
5 ~~governing body~~].

6 SECTION 16. Section 2001.514(b), Occupations Code, is
7 amended to read as follows:

8 (b) The commission shall set the amount of the bond or other
9 security, taking into consideration the amount of money that has or
10 is expected to become due from the license holder. The amount
11 required by the commission may not exceed [~~three times~~] the amount
12 due according to the license holder's average quarterly reports.

13 SECTION 17. The following provisions of Chapter 2001,
14 Occupations Code, are repealed:

- 15 (1) Section 2001.002(10);
- 16 (2) Section 2001.152(c);
- 17 (3) Section 2001.406(c);
- 18 (4) Sections 2001.410(b) and (d);
- 19 (5) Section 2001.417;
- 20 (6) Section 2001.457(d); and
- 21 (7) Section 2001.505(c).

22 SECTION 18. The Texas Lottery Commission shall adopt rules
23 as required by Section 2001.451, Occupations Code, as amended by
24 this Act, not later than April 1, 2006.

25 SECTION 19. (a) If on or after the effective date of this
26 Act a licensed authorized organization has a balance in its bingo
27 account of more than the maximum amount of operating capital

1 allowed by Chapter 2001, Occupations Code, as amended by this Act,
2 the organization shall distribute the funds in excess of the
3 organization's maximum operating capital allowed by Chapter 2001,
4 Occupations Code, as amended by this Act, not later than:

5 (1) the first anniversary of the effective date of
6 this Act if the excess amount is less than 200 percent of the
7 maximum amount of operating capital;

8 (2) the second anniversary of the effective date of
9 this Act if the excess amount is 200 percent or more but less than
10 300 percent of the maximum amount of operating capital; or

11 (3) the third anniversary of the effective date of
12 this Act if the excess amount is 300 percent or more of the maximum
13 amount of operating capital.

14 (b) The Texas Lottery Commission may waive the requirements
15 of Subsection (a) of this section on application and a showing of
16 good cause by a licensed authorized organization.

17 (c) This section expires January 1, 2009.

18 SECTION 20. This Act takes effect October 1, 2005.