

By: Flores

H.B. No. 1138

Substitute the following for H.B. No. 1138:

By: Homer

C.S.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.

(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 follows:

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

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

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

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

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

21 (2) the percentage that the net proceeds of the
22 licensed authorized organizations bear to the adjusted gross
23 receipts of the organizations earned from their bingo operations.

24 (b) For purposes of Subsection (a)(2):

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

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

3 (c) For purposes of Subsection (a)(2), the commission shall
4 determine total net proceeds in a manner that does not reduce gross
5 receipts by the amount of rent paid by a licensed authorized
6 organization to another licensed authorized organization for
7 rental of bingo premises if the other organization pays rent for the
8 premises to a licensed commercial lessor.

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

11 (b) The application must include:

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

13 (2) the names and addresses of the applicant's
14 officers and directors;

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

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

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

23 ~~[(6)]~~ the amount of rent to be paid or other
24 consideration to be given, directly or indirectly, for each
25 occasion for use of the premises of another licensed authorized
26 organization or for use of the premises of a licensed commercial
27 lessor;

1 (6) [~~(7)~~] all other items of expense intended to be
2 incurred or paid in connection with conducting, promoting, and
3 administering bingo and the names and addresses of the persons to
4 whom, and the purposes for which, the expenses are to be paid;

5 (7) [~~(8)~~] the specific purposes to and the manner in
6 which the net proceeds of bingo are to be devoted;

7 (8) [~~(9)~~] a statement that the net proceeds of bingo
8 will go to one or more of the authorized charitable purposes under
9 this chapter;

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

15 (10) [~~(11)~~] ~~a statement that a copy of the application~~
16 ~~has been sent to the appropriate governing body;~~

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

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

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

27 (b) The commission may not issue a license to an authorized

1 organization to conduct bingo if an officer or director of the
2 organization has been convicted of a felony, criminal fraud, a
3 gambling or gambling-related offense, or a crime of moral turpitude
4 if less than 10 years has elapsed since the termination of a
5 sentence, parole, mandatory supervision, or community supervision
6 served for the offense.

7 SECTION 6. Section 2001.106, Occupations Code, is amended
8 to read as follows:

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

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

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

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

- 24 (1) a person convicted of a felony, criminal fraud, a
25 gambling or gambling-related offense, or a crime of moral turpitude
26 if less than 10 years has elapsed since termination of a sentence,
27 parole, mandatory supervision, or community supervision served for

1 the offense;

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

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

8 (4) a distributor or manufacturer; or

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

15 [~~(6) a foreign corporation or other foreign legal~~
16 ~~entity;~~

17 [~~(7) an individual who is not a resident of this state;~~

18 [~~(8) a corporation or other legal entity owned or~~
19 ~~controlled by:~~

20 [~~(A) a foreign corporation; or~~

21 [~~(B) an individual who is not a resident of this~~
22 ~~state; or~~

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

24 [~~(A) whose shares are publicly traded; or~~

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

27 SECTION 8. Section 2001.306(c), Occupations Code, is

1 amended to read as follows:

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

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

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

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

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

24 (a) A licensed authorized organization shall establish and
25 maintain one regular checking account designated as the
26 organization's "bingo account." ~~[The organization may also~~
27 ~~maintain an interest-bearing savings account designated as the~~

1 ~~"bingo savings account."~~

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

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

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

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

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

22 (g) The bingo operations of a licensed authorized
23 organization must result in net proceeds over the organization's
24 license period, except if the organization has a two-year license,
25 the organization's bingo operations must result in net proceeds
26 over each 12-month period that ends on the anniversary date of the
27 issuance of the two-year license.

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

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

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

14 (2) experiences circumstances beyond the control of
15 the organization, including force majeure, that necessitate an
16 increase in operating capital; or

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

21 (j) A licensed authorized organization may apply to the
22 commission for a waiver of the requirements of this section and
23 Section 2001.457. The commission may grant the waiver upon a
24 showing of good cause by the organization that compliance with this
25 section and Section 2001.457 is detrimental to the organization's
26 existing or planned charitable purposes. An organization applying
27 for a waiver establishes good cause by:

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

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

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

8 (c) A licensed authorized organization shall ~~[keep and]~~
9 account for all checks and withdrawal slips, including voided
10 checks and withdrawal slips.

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

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

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

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

23 ~~[(3) the transfer of net proceeds derived from the~~
24 ~~conduct of bingo to the organization's bingo savings account~~
25 ~~pending a disbursement to a charitable purpose.~~

26 ~~[(b) A licensed authorized organization must make the~~
27 ~~disbursement of net proceeds on deposit in the bingo savings~~

1 ~~account to a charitable purpose by transferring the intended~~
2 ~~disbursement back into the organization's bingo account and then~~
3 ~~withdrawing an amount by a check drawn on the bingo account].~~

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

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

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

22 (c) A licensed authorized organization that has ceased to
23 conduct bingo for any reason and that has unexpended bingo funds
24 shall disburse those funds as provided by this subchapter ~~[to~~
25 ~~charitable purposes]~~ before the end of the next calendar quarter
26 after the calendar quarter in which the organization ceases to
27 conduct bingo.

1 SECTION 14. Section 2001.502, Occupations Code, is amended
2 to read as follows:

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

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

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

13 (1) the amount of the gross receipts derived from
14 bingo;

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

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

20 (4) the net proceeds derived from bingo;

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

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

25 (b) A license holder shall[+]

26 [~~1~~] maintain records to substantiate the contents of
27 each report[~~, and~~

1 ~~[(2) furnish a copy of each report to the appropriate~~
2 ~~governing body].~~

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

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

10 SECTION 17. The following provisions of Chapter 2001,
11 Occupations Code, are repealed:

- 12 (1) Section 2001.002(10);
- 13 (2) Section 2001.152(c);
- 14 (3) Section 2001.155;
- 15 (4) Section 2001.305;
- 16 (5) Section 2001.406(c);
- 17 (6) Sections 2001.410(b) and (d);
- 18 (7) Section 2001.417;
- 19 (8) Section 2001.457(d); and
- 20 (9) Section 2001.505(c).

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

24 SECTION 19. (a) If on or after the effective date of this
25 Act a licensed authorized organization has a balance in its bingo
26 account of more than the maximum amount of operating capital
27 allowed by Chapter 2001, Occupations Code, as amended by this Act,

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

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

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

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

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

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

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