

By: Flores

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 2001.059, Occupations Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

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

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

SECTION 2. Subchapter B, Chapter 2001, Occupations Code, is amended by adding Section 2001.060 to read as follows:

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

1 (1) the total amount of gross receipts earned by
2 licensed authorized organizations from their bingo operations; and

3 (2) a comparison of the gross receipts received and
4 the net proceeds derived from those gross receipts.

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

11 SECTION 3. Section 2001.104, Occupations Code, is amended
12 by adding Subsection (e) to read as follows:

13 (e) An applicant for a two-year license under Subsection (d)
14 may pay an amount equal to one-half of the amount of the license fee
15 required by Subsection (d) plus \$25 on or before the date the
16 application is due, and may pay the remaining one-half of the
17 license fee on or before the date the second year of the license
18 period begins as determined by commission rule.

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

- 21 (b) The application must include:
- 22 (1) the name and address of the applicant;
 - 23 (2) the names and addresses of the applicant's
24 officers;
 - 25 (3) the address of the premises where and the time when
26 the applicant intends to conduct bingo under the license sought;
 - 27 (4) the name and address of the licensed commercial

1 lessor of the premises, if the applicant intends to lease premises
2 to conduct bingo from a person other than an authorized
3 organization;

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

6 ~~[(6)]~~ the amount of rent to be paid or other
7 consideration to be given, directly or indirectly, for each
8 occasion for use of the premises of another licensed authorized
9 organization or for use of the premises of a licensed commercial
10 lessor;

11 (6) ~~[(7)]~~ all other items of expense intended to be
12 incurred or paid in connection with conducting, promoting, and
13 administering bingo and the names and addresses of the persons to
14 whom, and the purposes for which, the expenses are to be paid;

15 (7) ~~[(8)]~~ the specific purposes to and the manner in
16 which the net proceeds of bingo are to be devoted;

17 (8) ~~[(9)]~~ a statement that the net proceeds of bingo
18 will go to one or more of the authorized charitable purposes under
19 this chapter;

20 (9) ~~[(10)]~~ a designation of one or more active members
21 of the applicant organization under whom bingo will be conducted
22 accompanied by a statement signed by each designated member stating
23 that the member will be responsible for the conduct of bingo under
24 the terms of the license and this chapter;

25 (10) ~~[(11)] a statement that a copy of the application
26 has been sent to the appropriate governing body,~~

27 ~~[(12)]~~ the name and address of each person who will

1 work at the proposed bingo occasion, the nature of the work to be
2 performed, and a statement as to whether the person has been
3 convicted of a felony, a gambling offense, criminal fraud, or a
4 crime of moral turpitude; and

5 (11) [~~(13)~~] sufficient facts relating to the
6 applicant's incorporation and organization to enable the
7 commission to determine whether the applicant is an authorized
8 organization.

9 SECTION 5. Section 2001.106, Occupations Code, is amended
10 to read as follows:

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

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

22 SECTION 6. Section 2001.154(a), Occupations Code, is
23 amended to read as follows:

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

- 26 (1) a person convicted of a felony, criminal fraud, a
27 gambling or gambling-related offense, or a crime of moral turpitude

1 if less than 10 years has elapsed since termination of a sentence,
2 parole, mandatory supervision, or community supervision served for
3 the offense;

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

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

10 (4) a distributor or manufacturer; or

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

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

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

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

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

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

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

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

27 [~~(B) owned or controlled by a corporation whose~~

1 ~~shares are publicly traded].~~

2 SECTION 7. Section 2001.306(c), Occupations Code, is
3 amended to read as follows:

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

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

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

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

23 SECTION 9. Section 2001.451, Occupations Code, is amended
24 by amending Subsections (a), (c), (d), and (e) and adding
25 Subsections (g), (h), (i), and (j) to read as follows:

26 (a) A licensed authorized organization shall establish and
27 maintain one regular checking account designated as the

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

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

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

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

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

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

24 (g) The bingo operations of a licensed authorized
25 organization must result in net proceeds over the organization's
26 license period.

27 (h) Except as provided by Subsection (i), a licensed

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

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

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

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

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

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

27 (1) providing credible evidence of circumstances

1 beyond the control of the organization, including force majeure; or
2 (2) furnishing the commission with a credible business
3 plan for the organization's conduct of bingo or the organization's
4 existing or planned charitable purposes.

5 SECTION 10. Section 2001.453, Occupations Code, is amended
6 to read as follows:

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

10 (1) the payment of necessary and reasonable bona fide
11 expenses, including compensation of personnel, as permitted under
12 Section 2001.458 incurred and paid in connection with the conduct
13 of bingo; or

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

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

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

25 SECTION 11. Sections 2001.457(a), (b), and (c), Occupations
26 Code, are amended to read as follows:

27 (a) Before the end of each quarter, a licensed authorized

1 organization shall disburse all [~~for charitable purposes an amount~~
 2 ~~not less than 35 percent~~] of the organization's net proceeds
 3 [~~adjusted gross receipts~~] from the preceding quarter, other than
 4 amounts retained under Section 2001.451, as provided by this
 5 subchapter [~~less the amount of authorized expenses not to exceed~~
 6 ~~six percent of the gross receipts~~].

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

16 (c) A licensed authorized organization that has ceased to
 17 conduct bingo for any reason and that has unexpended bingo funds
 18 shall disburse those funds as provided by this subchapter [~~to~~
 19 ~~charitable purposes~~] before the end of the next calendar quarter
 20 after the calendar quarter in which the organization ceases to
 21 conduct bingo.

22 SECTION 12. Section 2001.502, Occupations Code, is amended
 23 to read as follows:

24 Sec. 2001.502. PRIZE FEE. A licensed authorized
 25 organization shall collect from a person who wins a bingo prize a
 26 fee in the amount of five percent of the amount or value of the
 27 prize, except that a winning pull-tab ticket with a prize of \$5 or

1 less is exempt from the prize fee.

2 SECTION 13. Section 2001.505(b), Occupations Code, is
3 amended to read as follows:

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

9 SECTION 14. The following provisions of Chapter 2001,
10 Occupations Code, are repealed:

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

18 SECTION 15. (a) The Texas Lottery Commission shall adopt
19 rules as required by Section 2001.451, Occupations Code, as amended
20 by this Act, not later than January 1, 2006.

21 (b) The changes in law made by this Act to the license
22 application fee apply to an application filed on or after the
23 effective date of this Act. An application filed before the
24 effective date of this Act is governed by the law in effect
25 immediately before the effective date of this Act, and that law is
26 continued in effect for that purpose.

27 SECTION 16. (a) If on or after the effective date of this

1 Act a licensed authorized organization has a balance in its bingo
2 account of more than the maximum amount of operating capital
3 allowed by Chapter 2001, Occupations Code, as amended by this Act,
4 the organization shall distribute the funds in excess of the
5 organization's maximum operating capital allowed by Chapter 2001,
6 Occupations Code, as amended by this Act, not later than:

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

10 (2) the second anniversary of the effective date of
11 this Act if the excess amount is 200 percent or more but less than
12 300 percent of the maximum amount of operating capital; or

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

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

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

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