

By: Hamric

H.B. No. 1434

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas Lottery
3 Commission.

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

5 SECTION 1. Section 466.014, Government Code, is amended by
6 adding Subsection (d) to read as follows:

7 (d) A contract between the division and a lottery operator
8 under Subsection (b) must contain a provision allowing the contract
9 to be terminated without penalty if the division is abolished.

10 SECTION 2. Subchapter B, Chapter 466, Government Code, is
11 amended by adding Section 466.027 to read as follows:

12 Sec. 466.027. COMPREHENSIVE BUSINESS PLAN. (a) The
13 commission shall develop a comprehensive business plan to guide the
14 commission's major initiatives. The plan at a minimum must
15 include:

16 (1) a description of each commission program and
17 project;

18 (2) key management information;

19 (3) accurate financial data; and

20 (4) a detailed financial management plan.

21 (b) The commission at least annually shall review the
22 comprehensive business plan to assess the overall performance and
23 value of each program and project.

24 SECTION 3. Subchapter C, Chapter 466, Government Code, is

1 amended by adding Section 466.1005 to read as follows:

2 Sec. 466.1005. PROCUREMENTS. (a) The commission may
3 purchase or lease facilities, goods, and services and make any
4 purchases, leases, or contracts necessary for carrying out the
5 purposes of this chapter.

6 (b) The commission shall review and must approve all major
7 procurements as provided by commission rule. The commission by
8 rule shall establish a procedure to determine what constitutes a
9 major procurement based on the cumulative value of a contract and
10 other relevant factors.

11 (c) The commission may delegate to the executive director
12 the authority to approve procurements other than major
13 procurements.

14 SECTION 4. Sections 466.101(a) and (b), Government Code,
15 are amended to read as follows:

16 (a) The commission and executive director may establish
17 procedures for the purchase or lease of facilities, goods, and
18 services and make any purchases, leases, or contracts that are
19 necessary for carrying out the purposes of this chapter. The
20 procedures must, as determined feasible and appropriate by the
21 commission and executive director, promote competition to the
22 maximum extent possible.

23 (b) In all procurement decisions, the commission and
24 executive director shall take into account the particularly
25 sensitive nature of the lottery and shall act to promote and ensure
26 integrity, security, honesty, and fairness in the operation and
27 administration of the lottery and the objective of producing

1 revenues for the state treasury.

2 SECTION 5. Section 467.002, Government Code, is amended to
3 read as follows:

4 Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is
5 subject to Chapter 325 (Texas Sunset Act). Unless continued in
6 existence as provided by that chapter, the commission is abolished
7 and this chapter, Chapter 466, and Chapter 2001, Occupations Code,
8 expire [~~Act expires~~] September 1, 2017 [~~2005. In the review of the~~
9 ~~commission by the Sunset Advisory Commission, as required by this~~
10 ~~section, the sunset commission shall limit its review to the~~
11 ~~appropriateness of recommendations made by the sunset commission to~~
12 ~~the 78th Legislature. In the Sunset Advisory Commission's report~~
13 ~~to the 79th Legislature, the sunset commission may include any~~
14 ~~recommendations it considers appropriate~~].

15 SECTION 6. Sections 467.021(a) and (b), Government Code,
16 are amended to read as follows:

17 (a) The commission is composed of five [~~three~~] members
18 appointed by the governor with the advice and consent of the senate.

19 (b) Appointments [~~In making appointments~~] to the commission
20 shall be made without [~~, the governor shall strive to achieve~~
21 ~~representation by all the population groups of the state with~~
22 regard to the [~~economic status, sex,~~] race, color, disability, sex,
23 religion, age, or national origin of the appointees [~~and~~
24 ~~ethnicity~~].

25 SECTION 7. Section 467.022, Government Code, is amended to
26 read as follows:

27 Sec. 467.022. TERM OF OFFICE. Members hold office for

1 staggered terms of six years, with the terms of either one or two
2 members [~~member's term~~] expiring February 1 of each odd-numbered
3 year.

4 SECTION 8. Section 467.024, Government Code, is amended by
5 adding Subsections (c) and (d) to read as follows:

6 (c) A person may not be a commission employee employed in a
7 "bona fide executive, administrative, or professional capacity,"
8 as that phrase is used for purposes of establishing an exemption to
9 the overtime provisions of the federal Fair Labor Standards Act of
10 1938 (29 U.S.C. Section 201 et seq.), if:

11 (1) the person is an officer, employee, or paid
12 consultant of a Texas trade association in the field of bingo or
13 lottery; or

14 (2) the person's spouse is an officer, manager, or paid
15 consultant of a Texas trade association in the field of bingo or
16 lottery.

17 (d) A person may not act as the general counsel to the
18 commission if the person is required to register as a lobbyist under
19 Chapter 305 because of the person's activities for compensation on
20 behalf of a profession related to the operation of the commission.

21 SECTION 9. Subchapter B, Chapter 467, Government Code, is
22 amended by adding Section 467.0255 to read as follows:

23 Sec. 467.0255. TRAINING. (a) A person who is appointed to
24 and qualifies for office as a member of the commission may not vote,
25 deliberate, or be counted as a member in attendance at a meeting of
26 the commission until the person completes a training program that
27 complies with this section.

1 (b) The training program must provide the person with
2 information regarding:

3 (1) the legislation that created the commission and
4 the commission's programs, functions, rules, and budget;

5 (2) the results of the most recent formal audit of the
6 commission;

7 (3) the requirements of laws relating to open
8 meetings, public information, administrative procedure, and
9 conflicts of interest; and

10 (4) any applicable ethics policies adopted by the
11 commission or the Texas Ethics Commission.

12 (c) A person appointed to the commission is entitled to
13 reimbursement, as provided by the General Appropriations Act, for
14 travel expenses incurred in attending the training program
15 regardless of whether the attendance at the program occurs before
16 or after the person qualifies for office.

17 SECTION 10. Sections 467.026(a) and (c), Government Code,
18 are amended to read as follows:

19 (a) It is a ground for removal from the [~~The governor may~~
20 ~~remove a~~] commission that a member [~~if the member~~]:

21 (1) does not have at the time of taking office
22 [~~appointment~~] the qualifications required by Sections 467.023 and
23 467.024 [~~for appointment to the commission~~];

24 (2) does not maintain during service on the commission
25 the qualifications required by Sections 467.023 and 467.024 [~~for~~
26 ~~appointment to the commission~~];

27 (3) is ineligible for membership under [~~violates a~~

1 ~~prohibition established by~~ Section 467.023, 467.024, or 467.025;

2 (4) cannot, because of illness or disability,
3 discharge the member's duties for a substantial part of the member's
4 term ~~[for which the member is appointed because of illness or~~
5 ~~disability]~~; or

6 (5) is absent from more than half of the regularly
7 scheduled commission meetings that the member is eligible to attend
8 during a calendar year without an excuse approved ~~[unless the~~
9 ~~absence is excused]~~ by majority vote of the commission.

10 (c) If the executive director ~~[presiding officer]~~ has
11 knowledge that a potential ground for removal exists, the executive
12 director ~~[presiding officer]~~ shall notify the presiding officer of
13 the commission of the potential ground. The presiding officer
14 shall then notify the governor and the attorney general that a
15 potential ground for removal exists. If the potential ground for
16 removal involves the presiding officer, the executive director
17 shall notify the next highest ranking officer of the commission,
18 who shall then notify the governor and the attorney general that a
19 potential ground for removal exists.

20 SECTION 11. Subchapter B, Chapter 467, Government Code, is
21 amended by adding Section 467.037 to read as follows:

22 Sec. 467.037. DIVISION OF RESPONSIBILITIES. The commission
23 shall develop and implement policies that clearly separate the
24 policy-making responsibilities of the commission and the
25 management responsibilities of the executive director and the staff
26 of the commission.

27 SECTION 12. Subchapter C, Chapter 467, Government Code, is

1 amended by adding Sections 467.109-467.113 to read as follows:

2 Sec. 467.109. TECHNOLOGY POLICY. The commission shall
3 implement a policy requiring the commission to use appropriate
4 technological solutions to improve the commission's ability to
5 perform its functions. The policy must ensure that the public is
6 able to interact with the commission on the Internet.

7 Sec. 467.110. NEGOTIATED RULEMAKING AND ALTERNATIVE
8 DISPUTE RESOLUTION POLICY. (a) The commission shall develop and
9 implement a policy to encourage the use of:

10 (1) negotiated rulemaking procedures under Chapter
11 2008 for the adoption of commission rules; and

12 (2) appropriate alternative dispute resolution
13 procedures under Chapter 2009 to assist in the resolution of
14 internal and external disputes under the commission's
15 jurisdiction.

16 (b) The commission's procedures relating to alternative
17 dispute resolution must conform, to the extent possible, to any
18 model guidelines issued by the State Office of Administrative
19 Hearings for the use of alternative dispute resolution by state
20 agencies.

21 (c) The commission shall designate a trained person to:

22 (1) coordinate the implementation of the policy
23 adopted under Subsection (a);

24 (2) serve as a resource for any training needed to
25 implement the procedures for negotiated rulemaking or alternative
26 dispute resolution; and

27 (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the commission.

2 Sec. 467.111. PUBLIC PARTICIPATION. The commission shall
3 develop and implement policies that provide the public with a
4 reasonable opportunity to appear before the commission and to speak
5 on any issue under the jurisdiction of the commission.

6 Sec. 467.112. COMPLAINTS. (a) The commission shall
7 maintain a system to promptly and efficiently act on complaints
8 filed with the commission. The commission shall maintain
9 information about parties to the complaint, the subject matter of
10 the complaint, a summary of the results of the review or
11 investigation of the complaint, and its disposition.

12 (b) The commission shall make information available
13 describing the commission's procedures for complaint investigation
14 and resolution.

15 (c) The commission shall periodically notify the complaint
16 parties of the status of the complaint until final disposition.

17 (d) The commission by rule shall require an investigation
18 related to a complaint filed with the commission to be completed
19 within a reasonable time.

20 (e) The commission shall analyze the complaints filed with
21 the commission to identify any trends or issues related to certain
22 violations.

23 Sec. 467.113. CONSUMER INFORMATION AND PROTECTION. The
24 commission shall identify applicable laws governing consumer
25 information and protection and adopt policies to ensure that the
26 commission complies with those laws.

27 SECTION 13. Subchapter B, Chapter 2001, Occupations Code,

1 is amended by adding Section 2001.0555 to read as follows:

2 Sec. 2001.0555. COMPLIANCE MONITORING. The commission
3 shall adopt rules to govern the commission's monitoring of a
4 license holder to determine if the license holder is in compliance
5 with this chapter or rules adopted under this chapter. The rules at
6 a minimum must address audits and inspections and other compliance
7 and enforcement activities.

8 SECTION 14. Section 2001.057, Occupations Code, is amended
9 by adding Subsections (h) and (i) to read as follows:

10 (h) The committee shall annually develop a work plan
11 detailing the committee's objectives and the issues to be addressed
12 by the committee during the year. The plan must be submitted to and
13 formally approved by the commission in a public meeting. The plan
14 must:

- 15 (1) assess trends in the charitable bingo industry;
16 (2) review bingo rules to determine whether changes,
17 additions, or deletions are needed; and
18 (3) address other issues as determined by the
19 commission.

20 (i) The committee shall perform a review at the end of each
21 year to:

- 22 (1) assess the committee's accomplishments during the
23 year;
24 (2) identify opportunities for improving the
25 commission's regulation of bingo; and
26 (3) develop specific recommendations for commission
27 action.

1 SECTION 15. Section 2001.101, Occupations Code, is amended
2 to read as follows:

3 Sec. 2001.101. AUTHORIZED ORGANIZATION. (a) The
4 commission may license a person who is an authorized organization
5 eligible for a license to conduct bingo if the person has been in
6 existence for the time required by commission rule to ensure the
7 continuity and bona fide nature of the organization and is:

8 (1) a religious society [~~that has existed in this~~
9 ~~state for at least eight years~~];

10 (2) a nonprofit organization:

11 (A) whose predominant activities are for the
12 support of medical research or treatment programs; and

13 (B) that [~~for at least three years~~]:

14 (i) has [~~must have had~~] a governing body or
15 officers elected by a vote of members or by a vote of delegates
16 elected by the members; or

17 (ii) is [~~must have been~~] affiliated with a
18 state or national organization organized to perform the same
19 purposes as the nonprofit organization;

20 (3) a fraternal organization;

21 (4) a veterans organization; or

22 (5) a volunteer fire department.

23 (b) A fraternal organization:

24 (1) [~~must have been organized in this state for at~~
25 ~~least three years~~];

26 [~~(2)~~] must have [~~had during the three-year period~~] a
27 bona fide membership actively and continuously engaged as an

1 organization in furthering its authorized purposes; and

2 (2) [~~(3)~~] may not have authorized a person on behalf of
3 its membership, governing body, or officers to support or oppose a
4 particular candidate for public office by:

5 (A) making political speeches;

6 (B) passing out cards or other political
7 literature;

8 (C) writing letters;

9 (D) signing or circulating petitions;

10 (E) making campaign contributions; or

11 (F) soliciting votes.

12 SECTION 16. Subchapter G, Chapter 2001, Occupations Code,
13 is amended by adding Section 2001.3015 to read as follows:

14 Sec. 2001.3015. LICENSING RULES. The commission by rule
15 shall:

16 (1) establish comprehensive qualifications for a
17 person to be licensed or the person's license to be renewed under
18 this chapter;

19 (2) develop a standard license renewal process, from
20 submission to completion, for each license issued under this
21 chapter to ensure that a license holder continues to meet the
22 eligibility requirements provided by this chapter and commission
23 rule; and

24 (3) establish standards of conduct for a person
25 licensed under this chapter.

26 SECTION 17. The heading to Subchapter H, Chapter 2001,
27 Occupations Code, is amended to read as follows:

1 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINE [~~, REVOCATION, AND~~
2 ~~SUSPENSION~~] OF LICENSE HOLDERS

3 SECTION 18. Section 2001.351, Occupations Code, is amended
4 to read as follows:

5 Sec. 2001.351. DENIAL OF LICENSE. (a) The commission may
6 deny an application for a license or renewal of a license issued
7 under this chapter for a cause that would permit or require the
8 suspension or revocation of a license issued under this chapter.

9 (b) In making a determination whether to renew a license,
10 the commission shall consider the compliance history of a license
11 holder. The commission shall adopt rules to govern the specific
12 areas of compliance history that may be considered in the renewal
13 determination.

14 (c) After an opportunity for a hearing, the commission may
15 deny an application for renewal of a license if the applicant's
16 compliance history reveals conduct that is inconsistent with this
17 chapter or the commission's rules adopted under this chapter in the
18 specific areas considered by the commission in accordance with the
19 rules adopted under Subsection (b).

20 SECTION 19. Section 2001.353, Occupations Code, is amended
21 to read as follows:

22 Sec. 2001.353. DISCIPLINE [~~SUSPENSION OR REVOCATION~~] OF
23 LICENSE HOLDERS. (a) After a hearing, the commission shall [~~may~~]
24 suspend, [~~or~~] revoke, or refuse to renew a license issued under this
25 chapter or shall reprimand a license holder for:

26 (1) failure to comply with this chapter or a
27 commission rule; or

1 (2) a reason that would allow or require the
2 commission to refuse to issue or renew a license of the same class.

3 (b) The commission may place on probation a person whose
4 license is suspended. If a license suspension is probated, the
5 commission may require the person:

6 (1) to report regularly to the commission on the
7 matters that are the basis of the probation;

8 (2) to limit the person's activities under the license
9 in the manner prescribed by the commission; or

10 (3) to take any other reasonable action prescribed by
11 the commission to address the matters that are the basis of the
12 probation.

13 (c) The commission by rule shall:

14 (1) adopt written guidelines to ensure that probation
15 is administered consistently; and

16 (2) develop a system to track compliance with
17 probation requirements.

18 SECTION 20. Section 2001.355, Occupations Code, is amended
19 by amending Subsection (b) and adding Subsection (d) to read as
20 follows:

21 (b) Before temporarily suspending a license, the director
22 of bingo operations must follow any prehearing rules adopted by the
23 commission to determine if the license holder's continued operation
24 may constitute:

25 (1) an immediate threat to the health, safety, morals,
26 or welfare of the public; or

27 (2) a financial loss to this state, which includes a

1 license holder's failure to remit taxes under Section 2001.501 or
2 prize fee payments under Section 2001.502 to the commission as
3 required by those sections.

4 (d) The commission shall adopt rules to govern the temporary
5 suspension of a license under this section.

6 SECTION 21. Subchapter H, Chapter 2001, Occupations Code,
7 is amended by adding Section 2001.358 to read as follows:

8 Sec. 2001.358. SCHEDULE OF SANCTIONS; TIMELINE. (a) The
9 commission by rule shall adopt a schedule of sanctions that defines
10 and summarizes violations of this chapter or commission rules
11 adopted under this chapter to ensure that the sanctions imposed are
12 appropriate to the violation.

13 (b) The schedule must:

14 (1) allow deviations from the schedule for mitigating
15 circumstances clearly established by the commission;

16 (2) include a list of the most common violations and
17 the sanctions assessed for those violations; and

18 (3) establish the sanctions in accordance with the
19 seriousness or frequency of each type of violation.

20 (c) The commission by rule shall establish a timeline for
21 resolution of a violation of this chapter or commission rules
22 adopted under this chapter. The rules must include:

23 (1) a designated period for a person licensed under
24 this chapter to provide proof of corrective measures taken as
25 required by the commission for a violation of this chapter or
26 commission rules; and

27 (2) an approach and a designated period for the

1 commission to subsequently monitor a person found to have committed
2 a significant violation of this chapter or commission rules.

3 SECTION 22. Section 2001.407(a), Occupations Code, is
4 amended to read as follows:

5 (a) A licensed manufacturer may furnish, by sale or
6 otherwise, bingo equipment or supplies to a licensed distributor.
7 ~~A [Except as provided by Section 2001.257(b), a]~~ licensed
8 manufacturer may not furnish, by sale or otherwise, bingo equipment
9 or supplies to a person other than a licensed distributor.

10 SECTION 23. Section 2001.459(a), Occupations Code, is
11 amended to read as follows:

12 (a) The following items of expense incurred or paid in
13 connection with the conduct of bingo must be paid from an
14 organization's bingo account:

15 (1) advertising, including the cost of printing bingo
16 gift certificates;

17 (2) security during a bingo occasion;

18 (3) the purchase or repair of bingo supplies and
19 equipment;

20 (4) prizes, other than authorized cash prizes;

21 (5) stated rental expenses;

22 (6) bookkeeping, legal, or accounting services;

23 (7) fees for callers, cashiers, and ushers;

24 (8) janitorial services; and

25 (9) license fees[~~, and~~

26 [~~(10) payment for services provided by a system~~
27 ~~service provider]~~.

1 SECTION 24. Section 2001.553(a), Occupations Code, is
2 amended to read as follows:

3 (a) A person commits an offense if a person sells or
4 attempts to induce the sale of bingo equipment or[~~7~~] supplies[~~7~~
5 ~~automated bingo services~~] to a licensed authorized organization and
6 the person is not licensed to do so.

7 SECTION 25. The following are repealed:

8 (1) Section 466.003, Government Code;

9 (2) Sections 2001.002(3), 2001.057(b), and
10 2001.553(b), Occupations Code; and

11 (3) Subchapter F, Chapter 2001, Occupations Code.

12 SECTION 26. Not later than March 1, 2006, the Texas Lottery
13 Commission shall:

14 (1) adopt the rules and procedures required by Section
15 466.1005, Government Code, as added by this Act;

16 (2) adopt the rules required by:

17 (A) Section 467.112, Government Code, as added by
18 this Act;

19 (B) Sections 2001.0555 and 2001.3015,
20 Occupations Code, as added by this Act; and

21 (C) Sections 2001.101, 2001.351, 2001.353, and
22 2001.355, Occupations Code, as amended by this Act;

23 (3) adopt the comprehensive business plan required by
24 Section 466.027, Government Code, as added by this Act;

25 (4) adopt the policies required by Sections 467.110
26 and 467.113, Government Code, as added by this Act; and

27 (5) adopt the schedule of sanctions and timeline

1 required by Section 2001.358, Occupations Code, as added by this
2 Act.

3 SECTION 27. (a) The changes in law made by this Act in the
4 prohibitions or qualifications applying to a member of the Texas
5 Lottery Commission do not affect the entitlement of a member
6 serving on the Texas Lottery Commission immediately before
7 September 1, 2005, to continue to serve and function as a member of
8 the Texas Lottery Commission for the remainder of the member's
9 term. Those changes in law apply only to a member appointed on or
10 after September 1, 2005.

11 (b) Promptly after this Act takes effect, the governor shall
12 appoint two additional members to the Texas Lottery Commission. In
13 appointing those members, the governor shall appoint one person to
14 a term expiring February 1, 2009, and one to a term expiring
15 February 1, 2011.

16 (c) The changes in law made by this Act to Chapter 467,
17 Government Code, relating to the investigation of a complaint filed
18 with the Texas Lottery Commission apply only to a complaint filed on
19 or after September 1, 2005. A complaint filed with the commission
20 before September 1, 2005, is governed by the law as it existed
21 immediately before that date, and the former law is continued in
22 effect for that purpose.

23 (d) The change in law made by this Act requiring the Texas
24 Lottery Commission to approve a procurement applies only to a
25 procurement or a contract for a procurement made on or after the
26 effective date of this Act. A procurement or procurement contract
27 made before the effective date of this Act is governed by the law in

1 effect when the procurement or contract was made, and the former law
2 is continued in effect for that purpose.

3 (e) The changes in law made by this Act governing
4 eligibility of a person for a license under Chapter 2001,
5 Occupations Code, apply only to the issuance or renewal of a license
6 by the Texas Lottery Commission under Chapter 2001, Occupations
7 Code, as amended by this Act, on or after the effective date of this
8 Act. A license issued by the Texas Lottery Commission under that
9 chapter before the effective date of this Act is governed by the
10 licensing requirements in effect when the license was last issued
11 or renewed until the license expires or is renewed as provided by
12 Chapter 2001, Occupations Code, as amended by this Act.

13 SECTION 28. This Act takes effect September 1, 2005.