

BILL ANALYSIS

C.S.H.B. 1156

By: Flores

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Committee on Licensing and Administrative Procedures studied charitable bingo following the 78th Legislature, Regular Session, and attempted through C.S.H.B. 1138 (passed out of its committee, but left pending in Senate State Affairs in the 79th Legislature, Regular Session) to incorporate its recommendations by making needed changes to the Bingo Enabling Act (BEA) (Chapter 2001, Occupations Code).

C.S.H.B. 1156 incorporates identical changes to the Act and will resolve lingering problems of former legislation passed to regulate bingo, improve the reporting of charitable bingo's performance, reform charitable bingo accounting and business practices, and eliminate obsolete or unneeded provisions of the BEA. In addition, C.S.H.B. 1156 incorporates additional provisions eliminating or clarifying information needed in applications for bingo licenses, determine who is eligible for bingo licenses, place responsibility for conducting bingo, expand the number of temporary licenses that may be issued to an organization and other reforms. Many provisions of the licensing provisions of current law are streamlined.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Lottery Commission in SECTIONS 7, 13, 22, 26, 34 and 36 of this bill.

ANALYSIS

SECTION 1. Amends Section 2001.002, Occupations Code, by adding definitions of "bingo chairperson," "crime of moral turpitude," "proprietary, equitable or credit interest" and "regular license" and also by amending the definition of "fraternal organization."

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

(a) Authorizes an officer, primary operator, or business representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder, rather than any person, to request from the Texas Lottery Commission (commission) an advisory opinion regarding compliance with this chapter and the rules of the commission.

(g) Authorizes the commission to refuse to issue an advisory opinion under this section 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, on or before June 1 of each even-numbered year, to prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over charitable bingo a report stating certain information for each of the preceding two calendar years.

(b) Defines "adjusted gross receipts".

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

SECTION 4. Amends Section 2001.101(a), Occupations Code, by adding volunteer emergency medical services providers to the list of non-profit organizations that may qualify for a license to conduct bingo.

SECTION 5. Amends Section 2001.102(a) and (b), Occupations Code, by eliminating certain unnecessary requirements from the license application, adding a requirement that directors of an organization be listed in the application, eliminating from the requirements for an application for a license to conduct bingo certain information that is redundant, obsolete or unnecessary and adding to the license application requirements documentation of the organization's federal tax history, letters of good standing from certain national umbrella organizations, copies of the applicant's bylaw, charter and other forming documents and information regarding good standing with the Texas Secretary of State and criminal background checks.

SECTION 6. Amends Section 2001.103(e), Occupations Code, by increasing the number of temporary bingo occasion licenses that may be issued to an organization from 12 to 24 per year.

SECTION 7. Strikes current formulas for determining whether the correct licensing fee was paid and authorizes the commission to establish the procedure by rule. Authorizes an applicant for a two-year license to pay half the fee at the time of application and half the fee at the beginning of the second year and eliminates the current \$25 added fee for two-year licenses.

SECTION 8. Amends subsection 2001.105(b) and adds subsection 2001.105(d) and (e), Occupations Code, to prohibit the commission from issuing a license to an authorized organization to conduct bingo if an officer or director of the organization has been convicted of certain offenses if less than 10 years have elapsed since the termination of a sentence served for the offense, to provide for a graduated grace period for late license renewal and provide for cessation of bingo activities after the grace period expires.

SECTION 9. Amends Section 2001.106, Occupations Code, by clarifying the address to be provided for a licensee and deleting the requirements that a license to conduct bingo include the specific purposes to which the net proceeds of bingo are to be devoted and a statement of whether a prize is to be offered and the amount of any authorized prize.

SECTION 10. Amends 2001.107(a), Occupations Code, that a bingo chairperson must have bingo training if there is no unit manager and that a unit manager must have the training where there is a unit.

SECTION 11. Amends Section 2001.154(a), Occupations Code, by deleting redundant language, better defining the tiered system separating lessor, distributor and manufacturer interests, and by deleting provisions declared unconstitutional regarding a foreign corporation or other foreign legal entity, an individual who is not a resident of this state, a corporation or other legal entity owned or controlled by certain entities, and certain corporations or other legal entities from the list of entities to whom the commission is prohibited from issuing or renewing a commercial lessor license.

SECTION 12. Amends Section 2001.156, Occupations Code, to eliminate certain unnecessary and vague language regarding information in an application for a license and add people required to be listed in a license application.

SECTION 13. Amends Section 2001.158(b) and (d), Occupations Code, by striking current formulas for determining whether the correct licensing fee was paid and authorizes the commission to establish the procedure by rule. Authorizes an applicant for a two-year license to pay half the fee at the time of application and half the fee at the beginning of the second year and eliminates the current \$25 added fee for two-year licenses.

SECTION 14. Adds the words “Or Renewal” to the Chapter heading for 2001.159, Occupations Code.

SECTION 15. Amends Section 2001.159(a) to apply certain licensing provisions to renewal of licenses and strike redundant or unnecessary provisions from the licensure provisions.

SECTION 16. Amends Section 2001.202, Occupations Code, to better define the tiered system that requires separation of the interests of lessors, distributors and manufacturers.

SECTION 17. Amends Section 2001.203(a) and (b), Occupations Code, by eliminating unneeded licensure information, clarify the information that must be provided to determine whether a prohibited interest exists, increase to \$5000 the amount of financial interest in a manufacturer, supplier, or distributor that must be disclosed in a license application.

SECTION 18. Amends Section 2001.207, Occupations Code, to better define the tiered system that separates the interests of lessors, distributors, and manufacturers.

SECTION 19. Amends Section 2001.208(b), Occupations Code, to increase to \$5000 the amount of financial interest in a manufacturer, supplier, or distributor that must be disclosed in a license application and clarify the financial interests a licensee must disclose in an application.

SECTION 20. Amends Sections 2001.211(b),(c) and (d), Occupations Code, to provide for certain deadlines to be on the 10th business day after certain events and allow imposition of an administrative penalty or other action in cases of violations for failing to give the commission certain notices.

SECTION 21. Amends Section 2001.306(c), Occupations Code, by deleting the requirement that a holder of a license to conduct bingo must surrender its original license before the license holder changes the location at which it conducts bingo.

SECTION 22. Amends Section 2001.313, Occupations Code, by adding Subsection (b-1), (h) and (i) and amending subsections (d) and (e), as follows:

(b-1) Provides a person’s registration as a bingo worker expires after three years if not renewed and that the person shall be removed from the registry if the person fails to renew before it expires and may be added back if the worker reapplies.

(d) Adds a prohibition against a licensed authorized organization allowing a person to act as a bingo worker without being on the registry. Also, adds bingo chairperson and bookkeeper to the list of persons required to be on the worker registry and changes salesperson for a licensed authorized organization to a salesperson of the licensed authorized organization.

(e) Requires the commission to provide a hearing if requested by the person before removing anyone from the registry for cause.

(h) Authorizes a licensed authorized organization to employ a person who is not on the registry established by this section as an operator, manager, cashier, usher, caller, or salesperson on a provisional basis for a period not to exceed 14 days if the person is awaiting the results of a background check by the commission and is a resident of Texas; if the person is not a resident of Texas the period is established by commission rule.

(i) Prohibits a person who has been removed from the registry under Subsection (e) and has not subsequently been listed on the registry under Subsection (g) from being employed under this subsection.

SECTION 23. Amends Section 2001.404, Occupations Code, to provide that an organization may also conduct bingo in a county contiguous to the county of its principal place of business or in a county adjacent to the county of its chief executive officer’s principal residence, if the organization has not business office.

SECTION 24. Amends Section 2001.407(a), Occupations Code, by striking language that refers to a section of Subchapter F, Chapter 2001, Occupations Code, that is repealed in SECTION 35.

SECTION 25. Amends Section 2001.411, Occupations Code, by adding a new subsection (c-1) to provide that an organization may designate as members one or more individuals who elect to become members, including all of its directors and those persons are members for purposes of the section and other law.

SECTION 26. Amends Section 2001.451, Occupations Code, by amending Subsections (a), (c), (d), and (e), and adding Subsections (g), (h), (i), and (j), as follows:

(a) Requires a licensed authorized organization to establish and maintain one regular checking account designated as the organization's "bingo account." Deletes existing text authorizing the organization to maintain an interest-bearing savings account designated as the "bingo savings account."

(c) Authorizes a licensed authorized organization to transfer money from its general fund or other account to the organization's bingo account or to the bingo account of a unit of which the organization is a member under Subchapter F1 (Unit Accounting), if applicable, if certain circumstances apply.

(d) Makes a conforming change required by other changes in this section.

(e) Prohibits a licensed authorized organization, except as permitted by Subsection (c) of this section and by Section 2001.453(2) from transferring gross receipts derived from the conduct of bingo to another account maintained by the organization.

(g) Requires the bingo operations of a licensed authorized organization to result in net proceeds over the organization's license period, except if the organization has a two-year license, the organization's bingo operations are required to result in net proceeds over each 12-month period that ends on the anniversary date of the issuance of the two-year license.

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

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

(j) Authorizes a licensed authorized organization to apply to the commission for a waiver of the requirements of this section and Section 2001.457. Authorizes the commission to grant the waiver upon a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. Sets forth requirements for an organization applying for a waiver to establish good cause.

SECTION 27. Amends Section 2001.452(c), Occupations Code, to require a licensed authorized organization to account for, rather than keep and account, all checks and withdrawal slips, including voided checks and withdrawal slips.

SECTION 28. Amends Section 2001.453, Occupations Code, to provide that bingo expenses must be reasonable or necessary and that disbursements of net proceeds must be as provided by this chapter. Strikes provisions that become unneeded when other provisions become law by deleting text relating to a licensed authorized organization's bingo savings account.

SECTION 29. Amends Section 2001.457(a), (b), and (c), Occupations Code, as follows:

(a) Requires a licensed authorized organization, before the end of each quarter, to disburse all of the organization's net proceeds from the preceding quarter, other than amounts retained under Section 2001.451, as provided by this subchapter.

(b) Requires the commission in applying appropriate sanctions if a licensed authorized organization fails to meet the requirements of Subsection (a) for a quarter, to consider whether, taking into account the amount required to be disbursed during that quarter and the three preceding quarters, the organization has disbursed a total amount sufficient to have met the disbursement requirement for that quarter and the three preceding quarters combined.

(c) Requires a licensed authorized organization that has ceased to conduct bingo for any reason and that has unexpended bingo funds to disburse those funds as provided by this subchapter before the end of the next calendar quarter after the calendar quarter in which the organization ceases to conduct bingo.

SECTION 30. Amends Section 2001.459(a), Occupations Code, to delete payment for services provided by a system service provider as one of the items of expense required to be paid from an organization's bingo account.

SECTION 31. Amends Section 2001.502, Occupations Code, to require a licensed authorized organization to collect from a person who wins a bingo prize of more than \$5 a fee in the amount of five percent of the amount or value of the prize and to remit a fee in the amount of five percent for all prizes awarded.

SECTION 32. Amends Sections 2001.505(a) and (b), Occupations Code, as follows:

(a) Deletes existing text requiring a licensed authorized organization conducting bingo to submit a quarterly report to the comptroller of public accounts.

(b) Deletes existing text requiring a license holder to furnish a copy of each report to the appropriate governing body.

SECTION 33. Amends Section 2001.514(b), Occupations Code, to prohibit the amount of the bond or other security set by the commission from exceeding the amount due, rather than three times the amount due, according to the license holder's average quarterly reports.

SECTION 34. Amends Section 2001.551(b), Occupations Code, to allow certain casual bingo games to occur, as defined by commission rule, without constituting an offense.

SECTION 35. Repeals the following sections of the Occupations Code:

(1) Section 2001.002(3) and (10);

(2) Section 2001.057(b);

(3) Section 2001.160(c)

(4) Section 2001.161(a)

(5) Section 2001.204

(6) Section 2001.305;

(7) Section 2001.406(c);

(8) Sections 2001.410(b) and (d) ;

(9) Section 2001.417;

(10) Section 2001.457(d);

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(11) Section 2001.505(c).

(12) Section 2001.553(b); and

(13) Subchapter F, Chapter 2001.

SECTION 36. Requires the Texas Lottery Commission to adopt rules as required by Chapter 2001, Occupations Code, as amended by this Act, not later than April 1, 2008.

SECTION 37. (a) Requires a licensed authorized organization, if on or after the effective date of this Act an organization has a balance in its bingo account of more than the maximum amount of operating capital allowed by Chapter 2001, Occupations Code, as amended by this Act, to distribute the funds in excess of the organization's maximum operating capital allowed by Chapter 2001, Occupations Code, as amended by this Act, by certain deadlines.

(b) Authorizes the Texas Lottery Commission to waive the requirements of Subsection (a) of this section on application and a showing of good cause by a licensed authorized organization.

(c) Provides that this section expires January 1, 2011.

SECTION 38. Effective date: October 1, 2007.

EFFECTIVE DATE

October 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds new definitions to provide clarity and guidance to the industry and commission and makes numerous changes in the licensing provisions of Chapter 2001, Occupations Code, to streamline those processes, reduce costs to the commission and charities and clarify what constitutes an eligible licensee and complete application. The substitute allows installment payments of two-year license fees. New types of non-profit organizations are listed as eligible to conduct bingo to clarify for the commission the charities that are eligible, new types of personnel are added to the bingo registry and provision for expiration of the registry is made. The substitute eliminates the system service provider because there are none. The substitute authorizes additional temporary licenses, provides for a grace period if a license expires and requires training of new individuals. The substitute repeals additional provisions of the chapter as a result of conforming to other changes or identification of additional obsolete, unnecessary or redundant provisions. The substitute makes provision for the provisional employment of non-state resident bingo workers based on commission rules and requires additional rulemaking in several sections.