

BILL ANALYSIS

C.S.H.B. 1474

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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The House Committee on Licensing and Administrative Procedures studied charitable bingo following the 79th and 80th Legislatures and attempted to incorporate recommendations made by the 78th Legislature regarding necessary changes to the Bingo Enabling Act (BEA) in the 80th Legislature, Regular Session.

C.S.H.B. 1474 incorporates a number of changes recommended by these studies and resolves lingering problems of enacted legislation to regulate bingo, improves the reporting of charitable bingo's performance, reforms charitable bingo accounting and business practices, and eliminates obsolete provisions of the BEA. The bill incorporates additional provisions to eliminate or clarify necessary information in applications for bingo licenses, determine eligibility for bingo licenses, place responsibility for conducting bingo, expand the number of temporary licenses that may be issued to an organization, and make other reforms. The bill streamlines a number of provisions in current law relating to bingo licensing requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Lottery Commission in SECTIONS 7, 12, 20, 31, 32, 39, and 44 of this bill.

ANALYSIS

Commission Powers and Duties

C.S.H.B. 1474 amends the Occupations Code to specify that the authorization to request an advisory opinion from the Texas Lottery Commission regarding compliance with state laws and commission rules relating to charitable bingo refers to a request by an officer, bingo chairperson, or authorized representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder, rather than a request by any person. The bill authorizes the commission to refuse to issue an advisory opinion under this provision that the commission knows to be in active litigation.

C.S.H.B. 1474 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 for each of the preceding two calendar years the total amount of adjusted gross receipts and net proceeds reported by licensed authorized organizations from their bingo operations and a comparison of these amounts, including the percentage that the net proceeds represents of the adjusted gross receipts. The bill defines "adjusted gross receipts" for these purposes as the amount remaining after deducting prizes paid, excluding prize fees collected from bingo players. The bill requires the commission, for purposes of its report, to determine the total amount of net proceeds in a manner that does not reduce gross receipts by the amount of rent paid for the rental of bingo premises by a licensed authorized organization to another licensed authorized organization if the

other organization pays rent to a licensed commercial lessor.

License to Conduct Bingo

C.S.H.B. 1474 reduces from eight years to three years the amount of time a religious society must exist in Texas before the commission may license the society to conduct bingo, specifies that a veterans organization and a volunteer fire department must have existed in Texas for at least three years to be eligible for such a license, and includes in the organizations eligible for a license to conduct bingo a volunteer emergency medical services provider that has existed in Texas for at least three years. The bill removes the requirement that an application for such a license be written, executed, and verified, and revises the information required on the application. The bill increases from 12 to 24 the maximum number of temporary licenses an authorized organization that holds an annual license to conduct bingo may receive during the 12-month period following the issuance or renewal of the license, and authorizes the holder of a license that is effective for two years to receive not more than 24 temporary licenses for each 12-month period that ends on an anniversary of the date the license was issued or renewed.

C.S.H.B. 1474 requires the Texas Lottery Commission by rule to establish procedures to determine if the appropriate license fee was paid and removes the requirement that the commission and the license holder compute at the end of the license period the amount of gross receipts actually recorded during the license period to make that determination. The bill provides an applicant for a license or renewal of a license to conduct bingo the option of obtaining a license that is effective for two years by paying the license fee for the first year at the time the applicant submits the application and the fee for the second year not later than the first anniversary of the date the license becomes effective. The bill removes the additional \$25 fee from the option of obtaining a two-year license by paying an amount equal to two times the amount of the annual license fee. The bill authorizes a licensed authorized organization to pay in advance, or establish an escrow account with the commission to cover, fees assessed for the amendment of a license or issuance of a temporary license.

C.S.H.B. 1474 amends a provision that prohibits the commission from issuing a license to an authorized organization to conduct bingo if an officer of the organization has been convicted of certain offenses and other conditions exist to apply the prohibition to a member of the board of directors of the organization. The bill specifies that a license to conduct bingo must include the name and address of the bingo chairperson, rather than of the member or members of the license holder, and the address of the premises where bingo is to be conducted, rather than an indication of those premises, and removes from the required information 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.

C.S.H.B. 1474 modifies the training requirements for a licensed authorized organization to require that the training be completed by the bingo chairperson according to commission rule, rather than by one or more designated active members of the organization, and removes language that specifies the commission's training requirement as being eight hours. The bill establishes that for an organization that is a member of a unit that designates a unit manager, the unit manager must complete the required training. The bill, in a provision requiring the commission to act on certain joint applications filed to change the premises or time for conducting bingo, extends from not later than the 10th day to not later than the 14th day after the date a joint application is filed the deadline by which the commission must act on the application if certain conditions exist.

Commercial Lessor's License

C.S.H.B. 1474 requires the commission by rule to establish procedures to determine if the appropriate commercial lessor license fee was paid and removes a requirement that the commission and the license holder compute at the end of the license period the amount of gross

receipts actually recorded during the license period to make that determination. The bill provides an applicant for a commercial lessor license or renewal of such a license the option of obtaining a license that is effective for two years by paying the license fee for the first year at the time the applicant submits the application and the fee for the second year not later than the first anniversary of the date the license becomes effective. The bill removes the additional \$25 fee from the option of obtaining a two-year license by paying an amount equal to two times the amount of the annual license fee.

C.S.H.B. 1474 applies provisions relating to the issuance of a commercial lessor license to the renewal of such a license and removes from the requirements for issuing or renewing a license that the applicant satisfies the requirements for a commercial lessor and that there is no diversion of the funds of the proposed lessee from lawful purposes. The bill removes language specifying that the rent to be charged to the lessor may not exceed \$600 for each bingo occasion conducted on the lessor's premises.

Manufacturer's and Distributor's Licenses

C.S.H.B. 1474 removes the requirement that an application for a manufacturer's license be written and verified and revises the information that must be included in an application for a manufacturer's or distributor's license. The bill extends the deadline for the holder of such a license to notify the commission of a change relating to a fact stated in the application from not later than the 10th day to not later than the 14th day after the date of the change and includes as a sanction for failing to give the required notice the imposition of an administrative penalty or other administrative action.

General Provisions Relating to Commission Licenses

C.S.H.B. 1474 entitles the commission to conduct an investigation of and to obtain criminal history record information maintained by the Department of Public Safety (DPS), the Federal Bureau of Investigation identification division, or another law enforcement agency to assist in the investigation of an applicant for or holder of a license to conduct bingo, a person required to be named in a license application, or an employee or other person who works or will work for a license holder and who is required by another provision to undergo a criminal background check. The bill makes conforming changes to the Government Code.

C.S.H.B. 1474 amends the actions the holder of a license to conduct bingo must take before changing the location at which it conducts bingo to specify that those actions include returning its original license if available or certifying that the license is not available, rather than surrendering the original license, and to clarify that the requirement for the license holder to receive an amended license refers to an amended license for the new location. The bill establishes that an individual's listing on the registry of individuals on whom the commission has conducted a criminal history background check and has approved to be involved in the conduct of bingo or to act as a bingo operator expires on the third anniversary of the date the individual was initially included on the registry and authorizes the individual to renew the listing before the expiration date. The bill requires the commission to remove the individual's name from the registry if the individual fails to renew the listing and authorizes an individual whose name is removed to reapply for listing on the registry. The bill amends a provision that prohibits an individual who is not listed on the registry from acting in certain job categories for a licensed authorized organization to prohibit a licensed authorized organization from allowing the individual to act in those job categories and to add a bingo chairperson and a bookkeeper to the list of job categories. The bill specifies that the hearing that takes place before the commission is authorized to refuse to add an individual's name to, or remove an individual's name from, the registry under certain conditions is undertaken if a hearing is requested by the individual. The bill includes in those conditions that the individual failed to provide a complete application or participated in any violation of the provisions that regulate charitable bingo or rules adopted by the commission for the administration of those provisions. The bill authorizes a licensed

authorized organization to employ an individual who is not on the registry as an operator, manager, cashier, usher, caller, or salesperson on a provisional basis if the individual is awaiting the results of a background check by the commission for a period not to exceed 14 days if the individual is a Texas resident or for a period to be established by commission rule if the individual is not a Texas resident. The bill prohibits an individual who has been removed from the registry and has not subsequently been listed on the registry following eligibility for reapplication from being employed on a provisional basis.

C.S.H.B. 1474 authorizes, rather than requires, the commission to collect a reasonable charge to cover the cost of providing an identification card to an approved bingo worker or providing a form allowing the individual to prepare the identification card.

C.S.H.B. 1474 specifies the actions a person may take to renew a license after its expiration date and the fees for a late license renewal and authorizes a person who files an application for such a renewal with the commission to continue to perform the bingo activities authorized under the license as if the license has not expired until it is renewed or renewal of the license is denied. The bill requires the person, to renew the license after the 60th day after the date the license expires, to file an application for an original license, and cease all bingo activities for which the license is required as of the 61st day after the date the license expires until a new license is issued. The bill requires the commission, if notice is required to be given to an authorized organization, to send the notice to the organization's bingo chairperson and to the appropriate commercial lessor.

Denial, Revocation, and Suspension of License

C.S.H.B. 1474 increases from the 10th day to the 14th day after the date a license holder is served a notice of a hearing for temporary license suspension by the director of bingo operations the date by which the hearing must be held, and the date by which the license holder must show cause on why the license should not be temporarily suspended.

Operation of Bingo

C.S.H.B. 1474 adds to the locations for which a licensed authorized organization may conduct bingo a county contiguous to the county where the organization has its primary business office or, if the organization does not have a business office, a county in Texas contiguous to the county of the principal residence of the organization's chief executive officer. The bill authorizes a licensed authorized organization or unit to pay as a separate expense, based on the percentage of the total area of the lessor's facility that the organization or unit uses as the bingo premises for the conduct of bingo, the organization's or unit's pro rata share of certain expenses paid by the lessor, excluding any penalties and interest, including property taxes; water, electric, and gas utility expenses; and property and casualty insurance premiums for the facility. The bill removes a provision that exempts a system service provider purchasing goods or services from a licensed manufacturer from the prohibition against such a manufacturer furnishing, by sale or otherwise, bingo equipment or supplies to a person other than a licensed distributor. The bill authorizes a licensed authorized organization to designate one or more individuals who elect to become members as members of the organization, including all of the organization's directors, and provides that these designated members are bona fide members of the organization for the purposes of conducting, promoting, or administering bingo or assisting in those activities and other law.

C.S.H.B. 1474 removes a provision providing that a bingo occasion begins when the premises are opened to the public. The bill prohibits a licensed authorized organization from conducting more than three bingo occasions during a calendar week under an annual license, rather than from conducting a bingo occasion more often than three days during a calendar week. The bill removes provisions authorizing a licensed authorized organization to conduct two bingo occasions during a 24-hour period and authorizing no more than two licensed authorized

organizations to conduct bingo at the same premises during a 24-hour period. The bill specifies that, if more than one bingo occasion is conducted at the same premises on the same day, the licensed times are prohibited from overlapping and bingo cards are authorized to be sold during a bingo occasion for play during a subsequent bingo occasion that is scheduled to begin at the same premises in not more than eight hours after the sale of cards begins, among other requirements. The bill authorizes bingo paper and pull-tab bingo tickets for a bingo occasion to be sold at the licensed premises before the bingo occasion begins.

Unit Accounting, Bingo Accounts, and Use of Proceeds

C.S.H.B. 1474 exempts a bingo unit from the franchise tax.

C.S.H.B. 1474 requires the deposit into the bingo account of a bingo unit or a licensed authorized organization of all funds derived from the conduct of bingo, less the amount awarded as cash prizes, to be made not later than the second business day, rather than the next business day, after the day of the bingo occasion on which the receipts were obtained.

C.S.H.B. 1474 clarifies that the designated "bingo account" a licensed authorized organization is required to establish and maintain is the organization's bingo account and that any interest-bearing account the organization maintains as the "bingo savings account" is a separate account. The bill revises provisions on the authorized transfer and comingling of money among and in the organization's general account, other account, and the bingo account of a unit of which the organization is a member. The bill requires the bingo operations of a licensed authorized organization to result in net proceeds over the organization's license period or, if the organization has a two-year license, to result in net proceeds over each 12-month period that ends on an anniversary of the date the two-year license was issued. The bill establishes the amount of operating capital a licensed authorized organization or a unit of such an organization is authorized to maintain in the organization's or unit's bingo account, with certain exceptions. The bill establishes that prize fees held in escrow for remittance to the commission are not included in the calculation of such operating capital. The bill requires the commission to adopt rules that allow a licensed authorized organization to retain a maximum amount of operating capital in the bingo account in excess of that amount if the organization meets certain criteria. The bill authorizes a licensed authorized organization to apply for a waiver of these requirements and those relating to the disbursement of the organization's proceeds to charity and authorizes the commission to grant the waiver on a showing of good cause by the organization that compliance with these requirements is detrimental to the organization's existing or planned charitable purposes. The bill provides that an organization applying for a waiver establishes good cause by providing to the commission certain credible evidence of circumstances beyond the control of the organization or a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes. The bill adds electronic funds transfers to the methods by which funds from the bingo account are required to be withdrawn and requires that the purpose, amount, and payee for each electronic funds transfer be recorded in accordance with rules adopted by the commission. The bill removes a provision that requires a licensed authorized organization to keep all checks and withdrawal slips, including voided checks and withdrawal slips.

C.S.H.B. 1474 specifies that a licensed authorized organization is authorized to withdraw funds from its bingo account only for the payment of either necessary or reasonable bona fide expenses incurred and paid in connection with the conduct of bingo, rather than for such expenses that are both necessary and reasonable, or for the disbursement of net proceeds derived from the conduct of bingo as established by these provisions, rather than to charitable purposes. The bill removes as a condition under which a licensed authorized organization is authorized to draw a check on its bingo account the transfer of net proceeds derived from the conduct of bingo to the organization's bingo savings account pending a disbursement to a charitable purpose. The bill removes the requirement that a licensed authorized organization make the disbursement of net proceeds on deposit in the bingo savings account to a charitable purpose by transferring the

intended disbursement back into the organization's bingo account and then withdrawing an amount by a check drawn on the bingo account. The bill revises the requirements for a licensed authorized organization's disbursement to charity.

C.S.H.B. 1474 adds electronic funds transfer fees to the list of expenses reasonable or necessary to conduct bingo that are authorized to be incurred or paid in connection with the conduct of bingo. The bill removes payment for services provided by a system service provider from the list of expense items incurred or paid in connection with the conduct of bingo that must be paid from an organization's bingo checking account. The bill specifies that the five-percent fee a licensed authorized organization is required to collect from a person who wins a bingo prize applies to a prize of more than \$5 and requires the organization to remit to the commission a fee in the amount of five percent of the amount or value of all bingo prizes awarded. The bill removes the comptroller of public accounts as an agency to which a licensed authorized organization conducting bingo must submit quarterly reports with certain financial information relating to its bingo operations. The bill removes a provision that requires a license holder to furnish a copy of each such report to the appropriate governing body.

Enforcement

C.S.H.B. 1474 removes from the conduct that constitutes an unlawful bingo offense that a person conducts, promotes, or administers bingo for purposes of amusement or recreation in the confines of a home and that participation in a game does not exceed 15 players. The bill further modifies the conditions constituting the offending conduct to specify that no player or other person furnishes anything of value as defined by rule to participate, rather than anything of more than nominal value for the opportunity to participate, and that the prizes awarded or to be awarded are nominal as defined by rule.

Administrative Penalty

C.S.H.B. 1474 extends the date by which the director of bingo operations is required to give written notice of a violation report to the person alleged to have committed the violation from not later than the 14th day after the date on which the report is issued to not later than the 21st day after that date.

Elections

C.S.H.B. 1474 extends from the 10th day after the date the result of an election to legalize bingo in a political subdivision is officially declared to the 14th day after that date the beginning date for which bingo is legalized or prohibited throughout a political subdivision if certain criteria are met. The bill extends the date by which a governing body of a political subdivision in which a bingo election has been held is required to give written notification to the commission of the results of the election from the 10th day after the date of the election to the 14th day after that date.

Other Provisions

C.S.H.B. 1474 defines "bingo chairperson," "crime of moral turpitude," and "regular license." The bill redefines "bingo occasion" to mean a single gathering or session at which a bingo game or a series of bingo games, including selling and redeeming pull-tab bingo tickets, are conducted on the day and at the times listed on the license issued to a licensed authorized organization, all activities incident to the conduct of a series of bingo games by a licensed authorized organization, including the organization's licensed times, and any preparatory or concluding activities incident to the conduct of bingo. The bill redefines "fraternal organization."

C.S.H.B. 1474 repeals provisions that define "automated bingo services" and "executive director," that include a system service provider as a member of the bingo advisory committee,

that authorize a licensed commercial lessor to transfer a license held by the license holder to a corporation formed by the license holder or from one corporation owned by the license holder to another corporation owned by the license holder, and that require an authorized organization that holds a commercial lessor license to lease a premises on which bingo is conducted to hold a license to conduct bingo at the same premises. The bill repeals provisions relating to a manufacturer's license bond, the access to and confidentiality of certain information the commission is authorized to obtain from the Internal Revenue Service relating to a person's qualification for a license under these provisions, the notice to local authorities by an applicant for an authorized organization license or a commercial lessor license, a prohibition against the commission licensing more than two affiliated organizations to conduct bingo on the same premises, the rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo, the use of a pull-tab dispenser in the operation of bingo, and the display on certain devices of the toll-free telephone number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling. The bill repeals the definitions for "adjusted gross receipts" and "cost of goods purchased by an organization" as applied to a licensed authorized organization's required disbursements to charity, and provisions relating to the licensing of a system service provider.

C.S.H.B. 1474 requires the commission to adopt the rules required by its provisions not later than April 1, 2010.

C.S.H.B. 1474 creates a temporary provision, set to expire January 1, 2013, that requires a licensed authorized organization that has a balance in its bingo account of more than the maximum amount of operating capital allowed by these provisions, on or after the effective date of this bill, to distribute the funds in excess of the organization's maximum operating capital allowed by these provisions not later than the first anniversary of the effective date if the excess amount is less than 200 percent of the maximum amount of operating capital, the second anniversary of the effective date if the excess amount is 200 percent or more but less than 300 percent of the maximum amount of operating capital, or the third anniversary of the effective date if the excess amount is 300 percent or more of the maximum amount of operating capital. The bill authorizes the commission to waive these requirements on application and a showing of good cause by a licensed authorized organization.

Repealers

C.S.H.B. 1474 repeals the following sections in the Occupations Code:

- Sections 2001.002(3) and (10)
- Section 2001.057(b)
- Section 2001.160(c)
- Section 2001.161(a)
- Section 2001.204
- Section 2001.303
- Section 2001.305
- Section 2001.402(b)
- Section 2001.406(c)
- Sections 2001.410(b) and (d)
- Section 2001.417
- Section 2001.457(d)
- Section 2001.505(c)
- Section 2001.553(b)
- Subchapter F, Chapter 2001

EFFECTIVE DATE

October 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1474 differs from the original by expanding the definition of "bingo chairperson" to apply the term to a member of the board of directors of a licensed authorized organization, who meets certain requirements. The substitute differs from the original by redefining "bingo occasion."

C.S.H.B. 1474 differs from the original by specifying that the authorization to request an advisory opinion from the Texas Lottery Commission refers to a request by a bingo chairperson, rather than a primary operator as in the original.

C.S.H.B. 1474 differs from the original by specifying that the increase of the maximum number of temporary licenses an authorized organization may receive applies to an authorized organization that holds an annual license, rather than a regular license as in the original. The substitute adds a provision not in the original to authorize the holder of a license that is effective for two years to receive not more than 24 temporary licenses for each 12-month period that ends on an anniversary of the date the license was issued or renewed.

C.S.H.B. 1474 adds a provision not in the original authorizing a licensed authorized organization to pay in advance, or to establish an escrow account with the commission to cover, fees assessed for the amendment of a license or issuance of a temporary license.

C.S.H.B. 1474 differs from the original by specifying that provisions prohibiting the issuance of a license to an authorized organization to conduct bingo apply to the actions of a member of the board of directors of the organization, rather than the director as in the original. The substitute differs from the original by including in the information that must be included on a license to conduct bingo the name and address of the bingo chairperson of the license holder under whom the bingo will be conducted and removing the names and addresses of the member or members of that license holder as in the original.

C.S.H.B. 1474 adds a provision not in the original entitling the commission to conduct an investigation of and to obtain criminal history record information maintained by relevant state and federal law enforcement agencies.

C.S.H.B. 1474 differs from the original by specifying that the commission is authorized, rather than required as in the original, to collect a reasonable charge to cover the cost of providing an identification card or form.

C.S.H.B. 1474 adds a provision not in the original authorizing a licensed authorized organization or unit to pay as a separate expense the pro rata share of certain taxes, expenses, and insurance premiums for a facility.

C.S.H.B. 1474 adds a provision not in the original to make various changes relating to the conduct of bingo occasions by licensed authorized organizations.

C.S.H.B. 1474 adds a provision not in the original exempting a bingo unit from the franchise tax. The substitute differs from the original by specifying that a deposit into a unit's or a licensed authorized organization's bingo account must be made not later than the second business day, rather than the next business day, after the day of the bingo occasion. The substitute adds provisions not in the original to provide exceptions to the established amount of operating capital a licensed authorized organization or a unit is authorized to maintain in a bingo account and to specify that prize fees held in escrow for remittance to the commission are not included in the calculation of such operating capital.

C.S.H.B. 1474 differs from the original by specifying that a licensed authorized organization is authorized to withdraw funds from, rather than draw a check on, its bingo account for certain expenses.

C.S.H.B. 1474 adds a provision not in the original amending the Government Code to entitle the commission to obtain criminal history record information maintained by the Department of Public Safety that relates to a person licensed to conduct bingo.

C.S.H.B. 1474 repeals provisions of the Occupations Code not repealed in the original, relating to the access to and confidentiality of certain information the commission is authorized to obtain from the Internal Revenue Service relating to a person's qualification for a license under these provisions and a prohibition against the commission licensing more than two affiliated organizations to conduct bingo on the same premises.