86R1910 BEE-D

By:  Thompson of Harris H.B. No. 914

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of bingo games.

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

SECTION 1.  Section 2001.002(18), Occupations Code, is amended to read as follows:

(18)  "Net proceeds" means:

(A)  in relation to the gross receipts from one or more bingo occasions, the amount remaining after deducting the reasonable sums necessarily and actually expended for expenses under Section 2001.458 and the prize tax [~~fee on prizes~~] under Section 2001.502; and

(B)  in relation to the gross rent or other consideration received by a licensed authorized organization for the use of its premises, fixtures, or equipment by another license holder, the amount remaining after deducting the reasonable sums necessarily and actually expended for any janitorial services and utility supplies directly attributable to the use of the premises, fixtures, or equipment.

SECTION 2.  Section 2001.003, Occupations Code, is amended to read as follows:

Sec. 2001.003.  REGULATORY FUNDING FROM LICENSE FEES AND BINGO PRIZE TAXES [~~FEES~~].  It is the intent of the legislature that the funding necessary for the administration of this chapter by the commission be collected by the commission from commercial lessor, manufacturer, and distributor license fees and money paid to the commission by bingo players as [~~bingo~~] prize taxes [~~fees~~].

SECTION 3.  Section 2001.060(b), Occupations Code, is amended to read as follows:

(b)  For purposes of Subsection (a), "adjusted gross receipts" means the amount remaining after deducting prizes paid, excluding prize taxes [~~fees~~] collected from bingo players.

SECTION 4.  Section 2001.103(d), Occupations Code, is amended to read as follows:

(d)  An organization operating under a temporary license is subject to:

(1)  the fees and any prize taxes authorized or imposed by this chapter; and

(2)  the other provisions of this chapter to the extent they can be made applicable.

SECTION 5.  Sections 2001.305(b) and (c), Occupations Code, are amended to read as follows:

(b)  Immediately after issuing [~~receiving~~] a license, the commission [~~a license holder~~] shall send a copy of the license to the appropriate governing body. The governing body shall file the copy of the license in a central file containing licenses issued under this chapter.

(c)  Not later than the 10th day after the date a license is issued, the commission [~~license holder~~] shall give written notice of the issuance of the license to:

(1)  the police department of the municipality in which bingo will be conducted, if bingo is to be conducted in a municipality; or

(2)  the sheriff of the county in which bingo will be conducted, if bingo is to be conducted outside a municipality.

SECTION 6.  The heading to Section 2001.312, Occupations Code, is amended to read as follows:

Sec. 2001.312.  FAILURE TO FILE [~~FEE~~] REPORTS AND REQUESTED INFORMATION.

SECTION 7.  Section 2001.313(h), Occupations Code, is amended to read as follows:

(h)  A licensed authorized organization may employ an individual who is not on the registry established by this section 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:

(1)  for a period not to exceed 30 [~~14~~] days if the individual is a resident of this state; or

(2)  for a period to be established by commission rule if the individual is not a resident of this state.

SECTION 8.  Section 2001.355(b), Occupations Code, is amended to read as follows:

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

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

(2)  a financial loss to this state, which includes a license holder's failure to remit prize tax [~~fee~~] payments under Section 2001.502 to the commission as required by that section.

SECTION 9.  Section 2001.419, Occupations Code, is amended by amending Subsections (c), (d), and (e) and adding Subsections (c-1) and (f) to read as follows:

(c)  Except as provided by Subsection (c-1), no [~~No~~] more than two bingo occasions may be conducted at the same premises during one day except that a third bingo occasion may be conducted under a temporary license held by a licensed authorized organization at that premises.

(c-1)  In addition to the bingo occasions authorized to be conducted at the same premises during one day under Subsection (c), on not more than three days of a calendar week, one or two additional bingo occasions may be held at the same premises at which bingo occasions are conducted under that subsection under the annual license of one or more licensed authorized organizations.

(d)  If more than one bingo occasion is conducted at the same premises on the same day:

(1)  the bingo occasions must be announced separately;

(2)  the licensed times may not overlap; and

(3)  notwithstanding Subsection (e), bingo cards may 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 for the subsequent occasion begins.

(e)  Bingo cards, pull-tab bingo tickets, and the use of card-minding devices [~~paper~~] for a bingo occasion may be sold at the licensed premises at any time beginning one hour before the bingo occasion and ending at the conclusion of the bingo occasion [~~begins~~].

(f)  If pull-tab bingo tickets are sold by one licensed authorized organization that conducts consecutive bingo occasions during one day, the organization may account for and report all of the pull-tab bingo ticket sales for the occasions as sales for the final occasion.

SECTION 10.  Section 2001.437(a), Occupations Code, is amended to read as follows:

(a)  If the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1)  the filing of one quarterly report for the unit on a form prescribed by the commission; and

(2)  the payment of fees and any taxes and the maintenance of the bingo inventory and financial records of the unit.

SECTION 11.  Section 2001.451, Occupations Code, is amended by amending Subsections (b), (g), and (i) and adding Subsection (g-1) to read as follows:

(b)  Except as provided by Section 2001.502(a), a [~~A~~] licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). Except as provided by Subsection (b-1), a deposit must be made not later than the third [~~second~~] business day after the day of the bingo occasion on which the receipts were obtained.

(g)  Except as provided by Subsection (g-1), the [~~The~~] bingo operations of a licensed authorized organization must[~~:~~

[~~(1)  result in net proceeds over the organization's license period; or~~

[~~(2)  if the organization has a two-year license,~~] result in net proceeds for the organization's bingo operations over each 24-month [~~12-month~~] period beginning on the first [~~that ends on an~~] anniversary of the date the initial [~~two-year~~] license was issued to the organization.

(g-1)  The bingo operations of a unit as defined by Section 2001.431 must result in net proceeds for the unit's bingo operations over each 24-month period beginning on the first anniversary of the date the unit is formed.

(i)  Prize taxes [~~fees~~] held in escrow for remittance to the commission are not included in the calculation of operating capital under Subsection (h).

SECTION 12.  The heading to Subchapter K, Chapter 2001, Occupations Code, is amended to read as follows:

SUBCHAPTER K. PRIZE TAX [~~FEES~~]

SECTION 13.  Section 2001.502, Occupations Code, is amended to read as follows:

Sec. 2001.502.  PRIZE TAX [~~FEE~~]. (a) A licensed authorized organization or unit as defined by Section 2001.431 shall[~~:~~

[~~(1)~~]  collect from a person who wins a cash bingo prize of more than $5 a tax [~~fee~~] in the amount of five percent of the amount [~~or value~~] of the prize. Each quarter, the licensed authorized organization or unit shall remit 50 percent of the amount collected as the prize tax to the commission and:

(1)  if a county or municipality in which the bingo game is conducted voted before November 1, 2019, to impose the prize tax, 50[~~; and~~

[~~(2)  remit to the commission a fee in the amount of five~~] percent of the amount collected as the prize tax to:

(A)  the county in which the bingo game is conducted, if the county voted to impose the tax by that date and the location at which bingo is conducted is not within the boundaries of a municipality;

(B)  the municipality in which the bingo game is conducted, if the municipality voted to impose the tax by that date and the county in which the bingo game is conducted did not vote to impose the tax by that date; or

(C)  in equal shares, the county and the municipality in which the bingo game is conducted, if the county and municipality each voted to impose the tax before that date; or

(2)  if a county or municipality is not entitled to a percentage of the amount of taxes collected under Subdivision (1), deposit 50 percent of the amount collected as the prize tax in the general charitable fund of the organization or unit to be used for the charitable purposes of the organization or organizations [~~or value of all bingo prizes of more than $5 awarded~~].

(b)  The governing body of a county or municipality that voted to impose a prize tax under Subsection (a) may at any time vote to discontinue the imposition of the tax. If a county or municipality votes after November 1, 2019, to discontinue the tax, the taxes shall be collected by the licensed authorized organization or unit as defined by Section 2001.431 and deposited as provided by Subsection (a)(2).

(c)  A licensed authorized organization or unit as defined by Section 2001.431 that receives notice from the commission under Subchapter K-1 of the termination of an entitlement of this state and any county or municipality to a share of a prize tax shall continue to collect the prize tax. A prize tax collected under this subsection shall be deposited into the general fund of the licensed authorized organization or unit to be used for the charitable purposes of the organization or organizations.

(d)  A tax collected under Subsection (a) does not apply to:

(1)  a merchandise prize awarded as a prize for winning a bingo game, including a bingo card, a pull-tab bingo ticket, a bingo dauber, or other bingo merchandise; or

(2)  the use of a card-minding device awarded as a prize for winning a bingo game.

SECTION 14.  Section 2001.504, Occupations Code, is amended to read as follows:

Sec. 2001.504.  PAYMENT AND REPORTING OF PRIZE TAX [~~FEE~~]. (a) A prize tax [~~fee on prizes~~] authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission and county or municipality, as applicable, quarterly on or before the 25th day of the month succeeding each calendar quarter.

(b)  The prize tax report [~~of the fee on prizes~~] must be filed under oath on forms prescribed by the commission.

(c)  The commission shall adopt rules for the payment of the prize tax [~~fee on prizes~~].

(d)  A license holder required to file a prize tax report [~~of the fee on prizes~~] shall deliver the quarterly report with the net amount of the fee due to the commission.

SECTION 15.  The heading to Section 2001.507, Occupations Code, is amended to read as follows:

Sec. 2001.507.  COLLECTION AND DEPOSIT [~~DISBURSEMENT~~] OF PRIZE TAX [~~FEE~~].

SECTION 16.  Section 2001.507(a), Occupations Code, is amended to read as follows:

(a)  The commission shall deposit the revenue collected from the prize tax [~~fee on prizes~~] imposed by Section 2001.502 to the credit of [~~a special account in~~] the general revenue fund.

SECTION 17.  Section 2001.508, Occupations Code, is amended to read as follows:

Sec. 2001.508.  PENALTIES FOR FAILURE TO PAY OR REPORT PRIZE TAX. (a) If a person fails to file a report of the prize tax [~~fee on prizes~~] as required by this chapter or fails to pay to the commission the prize tax [~~fee on prizes~~] imposed under this chapter when the report or payment is due, the person forfeits five percent of the amount due as a penalty, and after the first 30 days, the person forfeits an additional five percent.

(b)  A delinquent payment of the prize tax [~~fee on prizes~~] accrues interest at the rate provided by Section 111.060, Tax Code, beginning on the 60th day after the due date.

SECTION 18.  Section 2001.509, Occupations Code, is amended to read as follows:

Sec. 2001.509.  RECOMPUTATION OF PRIZE TAX [~~FEE~~]. If the commission is not satisfied with a report of the prize tax [~~fee on prizes~~] or the amount of the prize tax [~~fee on prizes~~] required to be remitted under this chapter to the state by a person, the commission may compute and determine the amount required to be paid on the basis of:

(1)  the facts contained in the report of the prize tax [~~fee on prizes~~] or report of receipts and expenses; or

(2)  any information possessed by the commission or that may come into the possession of the commission, without regard to the period covered by the information.

SECTION 19.  Sections 2001.510(a) and (c), Occupations Code, are amended to read as follows:

(a)  If a license holder fails to make a required report of the prize tax [~~fee on prizes~~], or if a person conducts bingo without a license, the commission shall make an estimate of the prizes awarded at a bingo occasion. The commission shall make the estimate for the period in respect to which the license holder or other person failed to make a report.

(c)  On the basis of the commission's estimate, the commission shall compute and determine the amount of the prize tax [~~fee on prizes~~] required to be paid to the state and shall add to that amount a penalty of 10 percent of the amount.

SECTION 20.  Sections 2001.511(a) and (c), Occupations Code, are amended to read as follows:

(a)  If the commission believes that the collection of the prize tax [~~fee on prizes~~], an amount of the prize tax [~~fee on prizes~~] required to be remitted to the state, or the amount of a determination will be jeopardized by delay, the commission shall make a determination of the prize tax [~~fee on prizes~~] or amount of the prize tax [~~fee~~] required to be collected, noting the finding of jeopardy on the determination. The determined amount is due and payable immediately.

(c)  A delinquency penalty of 10 percent of the prize tax [~~fee on prizes~~] or amount of the prize tax [~~fee on prizes~~] and interest at the rate of 10 percent a year attaches to the amount of the prize tax [~~fee on prizes~~] or the amount of the prize tax [~~fee on prizes~~] required to be collected.

SECTION 21.  Section 2001.512, Occupations Code, is amended to read as follows:

Sec. 2001.512.  APPLICATION OF TAX LAWS. (a) Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of the prize tax [~~fee on prizes~~] imposed under Section 2001.502 except as modified by this chapter.

(b)  In applying the provisions of Subtitle B, Title 2, Tax Code, to the prize tax [~~fee on prizes~~] imposed under Section 2001.502 only, the prize tax [~~fee on prizes~~] is [~~treated as if it were~~] a tax and the powers and duties assigned to the comptroller under that subtitle are assigned to the commission.

SECTION 22.  Section 2001.513(a), Occupations Code, is amended to read as follows:

(a)  At any time within three years after a person is delinquent in the payment of an amount of the prize tax [~~fee on prizes~~], the commission may collect the amount under this section.

SECTION 23.  Sections 2001.514(a), (c), and (d), Occupations Code, are amended to read as follows:

(a)  To secure payment of the prize tax [~~fee on prizes~~] imposed under this subchapter, each license holder shall furnish to the commission:

(1)  a cash bond;

(2)  a bond from a surety company chartered or authorized to do business in this state;

(3)  certificates of deposit;

(4)  certificates of savings;

(5)  United States treasury bonds;

(6)  subject to the approval of the commission, an assignment of negotiable stocks or bonds; or

(7)  other security as the commission considers sufficient.

(c)  On a license holder's failure to pay the prize tax [~~fee on prizes~~] imposed under this subchapter, the commission may notify the license holder and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the commission may forfeit all or part of the bond or security.

(d)  If the license holder ceases to conduct bingo and relinquishes the license holder's license, the commission shall authorize the release of all bonds and other security on a determination that no amounts of the prize tax [~~fee on prizes~~] remain due and payable under this subchapter.

SECTION 24.  Section 2001.515, Occupations Code, is amended to read as follows:

Sec. 2001.515.  COMMISSION'S DUTIES. The commission shall perform all functions incident to the administration, collection, enforcement, and operation of the prize tax [~~fee on prizes~~] imposed under this subchapter.

SECTION 25.  Chapter 2001, Occupations Code, is amended by adding Subchapter K-1 to read as follows:

SUBCHAPTER K-1. TERMINATION OF ENTITLEMENT TO PRIZE TAX SHARE

Sec. 2001.521.  COMMISSION DETERMINATION; TERMINATION. (a) At the request of any person or on its own motion, the commission may determine for a county in which a licensed authorized organization conducts bingo that:

(1)  a place of business in the county offers patrons of the business the opportunity to engage in gambling in violation of Chapter 47, Penal Code; and

(2)  the conduct described by Subdivision (1) is detrimental to the conduct of bingo by one or more licensed authorized organizations in the county.

(b)  Subject to Subsection (c), on a determination described by Subsection (a), the entitlement of this state, a county, or a municipality to a share of a prize tax collected under Section 2001.502 terminates.

(c)  Subject to this subchapter, the termination described by Subsection (b) is effective on the 30th day after the date the commission issues a determination under Subsection (a).

Sec. 2001.522.  NOTICE BY COMMISSION. The commission shall provide notice of a determination and termination under Section 2001.521, including the effective date of the termination, to:

(1)  the comptroller;

(2)  the county;

(3)  each licensed authorized organization and unit as defined by Section 2001.431 that conducts bingo in the county; and

(4)  each municipality in the county that is entitled to a local share of a prize tax.

Sec. 2001.523.  CHALLENGE BY COUNTY OR MUNICIPALITY. (a) A county or municipality entitled to notice under Section 2001.522 may challenge a determination under Section 2001.521 by submitting to the commission evidence that:

(1)  the conduct described by Section 2001.521(a)(1) is not occurring in the county; or

(2)  the conduct described by Section 2001.521(a)(1) is not detrimental to the conduct of bingo by one or more licensed authorized organizations.

(b)  A county or municipality must submit the evidence to the commission not later than the 30th day after the date the county or municipality receives notice under Section 2001.522.

Sec. 2001.524.  COMMISSION RESPONSE TO CHALLENGE BY COUNTY OR MUNICIPALITY. (a) Not later than the 30th day after the date the commission receives evidence submitted under Section 2001.523, the commission shall affirm or reverse the determination under Section 2001.521.

(b)  If the commission reverses the determination under Section 2001.521, the commission shall provide notice to an entity entitled to notice under Section 2001.522 that:

(1)  the determination is reversed; and

(2)  the entitlement of this state and any county or municipality to a share of a prize tax is not terminated as described by Section 2001.521(b).

(c)  If the determination under Section 2001.521 is affirmed, the commission shall provide notice to any county or municipality that submitted evidence under Section 2001.523 that:

(1)  the determination is affirmed; and

(2)  the county or municipality may request a hearing on the matter before the State Office of Administrative Hearings.

Sec. 2001.525.  HEARING. (a) A county or municipality that receives notice under Section 2001.524(c) may request an administrative hearing. A request for a hearing under this section must be received by the commission not later than the 30th day after the date the county or municipality receives notice under Section 2001.524(c).

(b)  The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision as to the affirmation or reversal of a determination under Section 2001.521.

(c)  A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Sec. 2001.526.  FINAL DECISION BY COMMISSION. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commission by order may:

(1)  reverse the determination under Section 2001.521; or

(2)  affirm the determination under Section 2001.521.

(b)  If the commission reverses the determination under Section 2001.521, the commission shall provide notice to an entity entitled to notice under Section 2001.522 that:

(1)  the determination is reversed; and

(2)  the entitlement of this state and any county or municipality to a share of a prize tax is not terminated as described by Section 2001.521(b).

(c)  If the commission affirms the determination under Section 2001.521, the commission shall provide notice to an entity entitled to notice under Section 2001.522 that:

(1)  the determination is affirmed; and

(2)  the entitlement of this state and any county or municipality to a share of a prize tax is terminated as described by Section 2001.521(b) effective:

(A)  on the 30th day after the date of the notice under this subsection; or

(B)  on a later date set by the commission.

Sec. 2001.527.  RULES; DELEGATION OF DETERMINATION AUTHORITY. (a) The commission shall adopt the rules necessary to implement this subchapter.

(b)  The commission by rule may delegate to the director of bingo operations the authority to make a determination under Section 2001.521(a).

SECTION 26.  Section 404.073(c), Government Code, is amended to read as follows:

(c)  Interest that has been and that will be accrued or earned from deposits made under a law to which this subsection applies is state funds not subject to allocation or distribution to taxing units, cities, or transportation authorities under that law. This subsection applies to:

(1)  Section 205.02, Alcoholic Beverage Code;

(2)  [~~Section 2001.507, Occupations Code;~~

[~~(3)~~] Section 403.105(d) of this code;

(3) [~~(4)~~]  Sections 321.501 and 321.504, Tax Code;

(4) [~~(5)~~]  Sections 322.301 and 322.304, Tax Code; and

(5) [~~(6)~~]  Sections 323.501 and 323.504, Tax Code.

SECTION 27.  Section 112.058(f), Tax Code, is amended to read as follows:

(f)  All protest payments of taxes, including prize taxes, [~~or of fees on prizes~~] imposed by and collected for the state under Chapter 2001, Occupations Code, that become due on or after September 1, 1993, are governed by Subchapter J, Chapter 403, Government Code.

SECTION 28.  The following sections of the Occupations Code are repealed:

(1)  Section 2001.103(a-1);

(2)  Section 2001.104;

(3)  Section 2001.313(b-3);

(4)  Section 2001.437(i);

(5)  Section 2001.503; and

(6)  Sections 2001.507(b), (c), (d), (e), (f), (g), (h), and (i).

SECTION 29.  (a) A county or municipality that was entitled to receive a portion of a bingo prize fee before the effective date of this Act may only continue to receive a portion of the prize tax collected under Section 2001.502, Occupations Code, as amended by this Act, after the effective date of this Act if the governing body of the county or municipality:

(1)  by majority vote of the members of the governing body approves the continued receipt of funds under that section and notifies the Texas Lottery Commission of that decision not later than November 1, 2021; and

(2)  notifies each licensed authorized organization within the county's or municipality's jurisdiction, as applicable, of the continued imposition of the tax.

(b)  Not later than October 1, 2021, the Texas Lottery Commission shall notify the governing body of a county or municipality that was entitled to receive a portion of the prize fee collected under Section 2001.502, Occupations Code, as that section existed immediately before the effective date of this Act, of the requirements for continued receipt of the prize tax under that section as provided in Subsection (a) of this section.

SECTION 30.  Section 2001.305, Occupations Code, as amended by this Act, applies only to an authorized organization license or a commercial lessor license that is issued under Chapter 2001, Occupations Code, on or after the effective date of this Act. An authorized organization license or a commercial lessor license issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 31.  The changes in law made by Subchapter K-1, Chapter 2001, Occupations Code, as added by this Act, apply only to a tax on a bingo prize that is awarded on or after the effective date of this Act. A tax on a bingo prize that is awarded before the effective date of this Act is governed by the law in effect on the date the prize is awarded, and the former law is continued in effect for that purpose.

SECTION 32.  (a) Except as otherwise provided by Subsection (b) of this section, this Act takes effect September 1, 2019.

(b)  Section 2001.502(c) and Subchapter K-1, Chapter 2001, Occupations Code, as added by this Act, take effect September 1, 2020.