

- SUBJECT:** Revising operations and regulation of charitable bingo
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Kuempel, Geren, Gutierrez, Hamilton, Menendez, Quintanilla
0 nays
3 absent — Thompson, Chisum, Jones
- WITNESSES:** For — Steve Bresnen, Bingo Interest Group; Stephen Fenoglio, State VFW and its 400 plus posts and over 700 charities and business organizations; (*Registered, but did not testify:* Melissa Young, Texas Charity Advocates; Nicole Stofer, Texas Association for the Advancement of Charitable Bingo; Bill Pewitt, Littlefield Corp.; Joe Garcia, Trend Gaming Systems)

Against — Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; (*Registered, but did not testify:* Cindy Asmussen, Concerned Women for America; Andrew Rivas, Texas Catholic Conference)

On — (*Registered, but did not testify:* Phil Sanderson, Texas Lottery Commission)
- BACKGROUND:** Since 1981, state licensed nonprofit organizations in Texas have been allowed to conduct bingo games if voters in the local political subdivision approve the games in an election. Proceeds must be spent for charitable purposes, although conductors of the games may deduct certain expenses. In about 200 counties, bingo has been approved by one or more local jurisdictions. In 2008, charitable bingo generated about \$684 million in total gross receipts, of which about \$33 million was spent for charitable purposes.

The Texas Lottery Commission, through its bingo division, regulates bingo and licenses the nonprofit organizations (called conductors), lessors of bingo halls, manufacturers and distributors of bingo supplies, and others. The Lottery Commission regulates prizes, accounting methods, and

other details of the games. About 1,200 organizations currently are authorized to conduct bingo games at about 500 locations.

Occupations Code, sec. 2001.101, establishes the types of organizations that can be licensed to conduct bingo. They include religious societies that have existed in Texas for at least eight years; certain nonprofit organizations that support medical research and treatment programs; nonprofit fraternal organizations; nonprofit veterans' organizations; and volunteer fire departments. Nonprofit organizations must have tax-exempt status under the U.S. Internal Revenue Code, sec. 501(c).

Organizations may conduct bingo only in the county in which they have their primary business office or the county in which their chief executive officer lives.

It is legal to conduct bingo within a home for amusement or recreation if no one furnishes anything of value for the opportunity to participate, the game does not have more than 15 players, and the prizes are nominal.

Bingo operators must make charitable distributions of a minimum of bingo funds each quarter. Charities must distribute at least 35 percent of adjusted gross receipts, less deductions for statutorily authorized expenses, not to exceed 6 percent of the gross receipts. Net proceeds, as related to gross receipts, is defined in sec. 2001.002(18) as the amount remaining after deducting the reasonable sums necessarily and actually expended for expenses authorized under the statute and for prize fees.

A 5 percent tax is imposed on prizes, of which counties and cities may choose to receive a portion. In 2008, \$26 million was collected in prize fees, of which about half went to local jurisdictions and about half to the state. In addition, a 3 percent gross rental tax is imposed on rental income received by people who lease premises for conducting bingo games. About \$3 million was collected in 2008 from this tax.

In 2003 the Legislature allowed charities at the same location to operate with joint bingo accounts, inventories, and personnel. This is called unit accounting.

DIGEST:

CSHB 1474 would change the formula for determining how much money bingo operators had to disburse for charitable purposes, revise charities' accounting methods, and require a biennial report to the governor and

Legislature about bingo. The bill would make various other changes, including changing the amount of time some organizations must be organized before being eligible for a license, allowing workers to be employed on a provisional basis while awaiting the results of background checks, and restricting who could request advisory opinions from the commission.

CSHB 1474 would take effect October 1, 2009. The Lottery Commission would have to adopt any rules required by the bill by April 1, 2010

Accounting methods and amount distributed for charitable purposes. CSHB 1474 would change the disbursement formula used to determine how much money bingo operators had to disburse for charitable endeavors. Instead of requiring that organizations distribute at least 35 percent of their adjusted gross receipts, less certain deductions, the bill would require that they disburse all of their net proceeds, other than amounts allowed to be kept in their bingo accounts.

Bingo operations would have to result in net proceeds during the organizations' license period, unless the organization had a two-year license, in which case it would have to have net proceeds over each 12-month period.

Licensed organizations and unit members could keep limited operating capital in their bingo accounts. The amount could equal their actual average expenses per quarter, based on the preceding license period, excluding prizes paid, up to \$50,000 per organization or per member of a unit. The commission would have to adopt rules permitting organizations to keep operating capital in excess of these restrictions if the organizations met certain criteria. The bingo operations director, upon request, could raise the limit for organizations to facilitate their operations.

Organizations could request waivers of the requirement that they disburse a minimum amount of funds for charitable purposes and of the limit on the operating capital that they could retain.

CSHB 1474 would allow organizations to transfer money from their general funds or other accounts to their bingo accounts or to the bingo account of a unit member if the balance in the account to which funds were being transferred was less than the maximum permitted by law and if the organization notified the commission within 14 days of the transfer.

CSHB 1474 would set deadlines, from one to three years after the bill's effective date, for organizations to distribute money in their bingo accounts that was in excess of the authorized maximum operating capital. The Lottery Commission could waive these requirements upon a showing of good cause.

Eligible organizations, conducting bingo. CSHB 1474 would make changes to the requirements that various organizations have existed for certain periods of time to be eligible for a license to conduct bingo. All organizations would now have to have been in existence for three years to be eligible for a license. The number of years that a religious society would have to exist would be reduced from eight to three years, and veterans' organizations and volunteer fire departments would have a specific requirement that they have been in existence for at least three years. The bill also would reduce from five to three years the time that a non-profit National Historical District had to be designated as such before it could get a bingo license.

CSHB 1474 would list the specific types of federal Internal Revenue Code tax-exempt designations under Section 501(c) that would make an organization eligible for a license.

The bill would allow bingo organizations to conduct bingo in counties contiguous to the counties that housed their primary business office. If the organization did not have a business office and bingo was currently restricted to the county of the residence of its chief executive officer, it could conduct bingo in an adjacent county.

The bill would put into statute the current ability under rules for organizations to name a bingo chairperson, rather than a bingo operator, to be responsible for bingo activities and would assign certain responsibilities to that person.

The bill also would allow organizations to designate members of their organizations who would then be able to participate in the bingo operations.

Bingo occasions. CSHB 1474 would allow bingo cards sold during a bingo occasion to be for play in a subsequent occasion within the next eight hours. It also would allow paper and pull-tab tickets to be sold before an occasion began and would eliminate a requirement for an intermission

between two organizations playing at the same premises on the same day.

Licenses. CSHB 1474 would increase from 12 to 24 the number of temporary bingo licenses that an organization with an annual license could receive in one year and would allow holders of two-year licenses to receive up to 24 temporary licenses for each 12-month period

The bill would establish a system of fees for late renewals of licenses in which the fees for late renewal increased the longer time after expiration that the fee was paid.

CSHB 1474 would revise the information required to be on an application to conduct bingo. Applications for a license would have to include the names and addresses of directors, certain tax information, and information necessary to conduct background checks.

The bill would require applicants for manufacturers and distributors licenses to report entities to which it owed \$5,000 or more, instead of the current \$500 or more.

Registry of bingo workers. The bill would allow organizations to employ persons not on the registry of approved bingo workers as operators, managers, cashiers, ushers, callers, or salespeople on a provisional basis for up to 14 days if they were Texas residents and awaiting results of background checks by the commission. If the person was not a Texas resident, the commission would establish the period that the person could work while awaiting results of the background check. Those removed from the registry for reasons listed in the Bingo Act and not placed back on the list by the commission could not be employed under the provisional conditions.

The listing of a person on the registry of approved bingo workers would expire in three years and could be renewed. The bill would add bingo chairpersons and bookkeepers to the list of persons who must be on the registry. The bill would make the hearings that are used to determine if a person must be taken off the registry or excluded from the registry occur only upon request of the worker.

Workers could be excluded from the registry for violating the Bingo Act or a commission rule or failing to provide a complete application.

Commission report. CSHB 1474 would require the commission to report to the governor and legislative leadership on or before June 1 of each even-numbered year on the total amount of adjusted gross receipts reported by an organization from their bingo operations, the net proceeds, and a comparison of these two amounts. Adjusted gross receipts would mean the amount remaining after prizes were paid, excluding prize fees collected from bingo players.

Fees. The commission would be required to establish by rule procedures to determine if bingo license holders and commercial lessors paid the appropriate license fee, which are established in current law. The current requirement that the license holder and the commission compute gross receipts to determine the fee would be eliminated.

The bill would eliminate a current fee of \$25 charged for two-year licenses and would allow payments for two-year licenses to be split up and paid once each year of the license.

Advisory opinions. The bill would limit who could seek advisory opinions from the commission to officers, bingo chairpersons, representatives of license holders, and attorneys, accountants, or bookkeepers retained by license holders. The commission could refuse to issue advisory opinions about matters in active litigation.

Non-licensed bingo. CSHB 1474 would revise the conditions under which non-licensed bingo could be conducted. CSHB 1474 would remove the requirement that the bingo be played within a home and that participants be limited to 15. The commission would decide by rule the limit on nominal prizes, instead of the current statutory requirement that it be nominal, and the value limit on what players can furnish to play would be determined by commission rule, rather than be limited to being nominal.

Other provisions. CSHB 1474 would make numerous other changes to the Bingo Act, including:

- revising what must be on bingo license applications and the form in which they must be submitted;
- extending from 10 to 14 days the date on which an election on bingo's legalization takes effect;
- specifying that two or more organizations joined together as a unit for bingo purposes would be exempt from the state franchise tax;

- authorizing the commission to conduct investigations and collect criminal history records for applicants and certain others involved in bingo;
- making permissive the current requirement that the commission collect a fee for providing identification cards to workers; and
- allowing organizations to remit the 5 percent prize fee on prizes of less than \$5 without having to collect the amount from the winner.

CSHB 1474 would repeal numerous provisions in the Bingo Act, including provisions:

- limiting the number of affiliated organizations at the same premises to two;
- requiring authorized organizations that also are commercial lessors to hold a license to conduct bingo at the same premises;
- allowing commercial lessors to transfer licenses to another corporation formed by the license holder from one corporation owned by the license holder to another one owned by the license holder;
- eliminating the requirement that applicants for manufacturers' licenses put up a bond;
- a \$1 maximum price for bingo pull tab tickets sold from dispensers;
- requiring that pull tab bingo tickets sold from dispensers show a representation of a bingo game;
- requiring that local authorities be sent copies of license applications;
- requiring that the toll-free number of the Problem Gamblers' Help Line of the now-defunct Texas Council on Problem and Compulsive Gambling be displayed on card-minding devices and pull-tab dispensers; and
- repealing the system services providers license.

SUPPORTERS
SAY:

CSHB 1474 would revise the state's bingo laws to help ensure that bingo organizations produce net proceeds and that an adequate portion of the proceeds were distributed for charitable purposes. It also would improve the handling of money by the organizations and would improve oversight of bingo by requiring that the governor and Legislature receive information that accurately portrayed the distributions for charitable purposes. Other changes would ease some unnecessary burdens on

operators and the commission and would update current law to remove obsolete language or to reflect current practices.

Accounting methods and amount distributed for charitable purposes.

CSHB 1474 would change how the state requires organizations to calculate what must be distributed for charitable endeavors to a formula that would be less complicated than the one used currently and that would ensure an appropriate amount of money was being disbursed for charitable purposes. The current requirement that organizations disburse 35 percent of gross receipts, less expenses, is complicated and can be misleading about the amount of money going to charitable purposes. It also can result in situations in which an organization is not distributing as much as it could or should for charitable purposes.

CSHB 1474 would solve these problems by allowing organizations to have a reasonable amount of money for operating capital and then requiring that the rest — their net proceeds — go for charitable purposes. By requiring that organizations have some net proceeds, CSHB 1474 would ensure that no organization could continue if it was not giving at least something for charitable purposes, even if that was a small amount in years in which new charities began playing the game.

CSHB 1474 would allow organizations to continue to save for big-ticket items by allowing for waivers of the general limits on what they could retain and requiring rules for organizations to keep operating capital in excess of the general restrictions. For example, if a volunteer fire department wanted to save money for a new truck, it could ask the commission for a waiver from the requirements in CSHB 1474.

CSHB 1474 would revise the way the organizations handled their money so that their accounting methods were more business-like and more easily examined and audited.

Eligible organizations, conducting bingo. CSHB 1474 would harmonize the requirements for eligibility to conduct bingo so that all organizations had to be in existence for three years before becoming eligible. The listing of tax exempt 501(c) organizations would help clarify who may be eligible for a license. Any 501(c) organization listed in CSHB 1474 would have to meet all other criteria and eligibility tests in the Bingo Act to obtain a license

Licenses. Increasing the number of temporary licenses would allow organizations to play bingo for special occasions, such as holidays. These games would have to meet all other restrictions on bingo operations.

Registry of bingo workers. CSHB 1474 would make a reasonable accommodation to current law so that organizations could hire the necessary workers quickly when they were unable to find workers on the registry to fill openings. Currently, all bingo employees must be part of the registry, but in some areas a high turnover of bingo employees can lead to a situation in which no workers who are on a registry are available to fill openings. CSHB 1474 would allow workers to be employed on a provisional basis for up to 14 days so that games could keep operating while these workers applied and were placed on the registry. While the commission often approves workers for the registry quickly, this does not happen in all cases.

Advisory opinions. CSHB 1474 would limit who could request advisory opinions from the commission to reduce the number of requests it received from individuals not responsible for the day-to-day operations of bingo, some of whom have made numerous, repetitive requests not designed for the purpose of the opinions. The advisory opinion process was created so that people in the bingo industry could request information about an interpretation or compliance with laws and rules, so the opinions should be limited to persons working in the industry. Limiting advisory opinions would be similar to the limitations on who may ask the attorney general for an opinion.

Commission report. Currently, the commission has no requirement to report to the Legislature directly about bingo activities. CSHB 1474 would address this by requiring a biennial report to the governor and legislative leadership to ensure that they could adequately monitor bingo in Texas and that they had adequate information to make decisions about proposed legislation.

Non-licensed bingo. The proposed changes to non-licensed bingo in CSHB 1474 would update the statutes to reflect the playing of bingo by those who were not required to have a license, such as at family reunions, company picnics, and other places. Allowing the commission to set the prize limit by rule would ensure that everyone was held to the same standard for nominal prizes and would give the commission necessary flexibility to change the limit when necessary.

OPPONENTS
SAY:

Accounting methods and amount distributed for charitable purposes.

The formula and requirements for disbursing funds that would be instituted under CSHB 1474 could harm some charities' ability to manage and save their funds for legal, charitable purposes. For example, some charities may want to save funds in excess of what they have to distribute under current law for a new building or other capital expenditure. Under CSHB 1474, they could be forced to disburse some of those funds if they were not granted a waiver by the commission from the limits in the bill. Requiring all charities to have net proceeds within a 12-month period could be unfair to new charities, which may incur significant start-up costs. Operators should not be held to a standard of turning a profit annually when other businesses and industries have no such requirements.

Eligible organizations, conducting bingo. The list of tax exempt 501(c) organizations in CSHB 1474 could overly broaden the type of organizations eligible to receive a license to play bingo.

Licenses. By increasing the number of temporary licenses that an organization could use, CSHB 1474 could lead to increased bingo activity in the state.

Registry of bingo workers. Allowing organizations to hire workers on a provisional basis without being on the registry of bingo workers would violate one of the purposes of the registry, which was created, in part, to help ensure that persons involved in certain aspects of bingo had undergone adequate background checks. Currently, the commission quickly approves applications for workers to be put on the registry, typically within 24 hours, so there is no need to allow a 14-day provisional period.

Non-licensed bingo. It would be better to set prize limits for non-licensed bingo in statute than to allow the commission to use rules to set prize limits.

NOTES:

The fiscal note for CSHB 1474 estimates a general revenue increase of \$2.7 million for fiscal 2010-11.