

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2519
By: Flores (Lucio)
Government Organization
5/23/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Under current law the Texas Lottery Commission (commission) regulates bingo, which may only be conducted by certain charitable organizations. Several areas of current law are vague and charities conducting bingo may find it difficult to comply with the law and regulations of the commission.

C.S.H.B. 2519 authorizes new procedures for charitable bingo regulation, clarifies current law, provides for extended license terms, and implements policies and procedures that may increase net proceeds, and reduce the cost of bingo regulation to charities that conduct bingo.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 18 (Section 2001.4155, Occupations Code) and SECTION 19 (Section 2001.437 and Section 2001.439, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.002, Occupations Code, by amending Subdivision (5), to redefine "bingo equipment."

SECTION 2. Amends Subchapter B, Chapter 2001, Occupations Code, by adding Section 2001.059, as follows:

Sec. 2001.059. **ADVISORY OPINIONS.** (a) Authorizes a person to request from the Texas Lottery Commission (commission) an advisory opinion regarding compliance with this chapter and the rules of the policy board.

(b) Requires the commission to respond to a request under Subsection (a) not later than the 60th day after the date a request is received, unless the commission determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. Requires the commission, in that event, to request additional information from the requestor not later than the 10th day after the date the request is received. Requires the commission, if the commission requests additional information, to respond to the request not later than the 60th day after the date additional information is received pursuant to the request for additional information.

(c) Authorizes a person who requests an advisory opinion under Subsection (a) to act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

(d) Provides that an advisory opinion issued under this section is not a rule under Subchapter B, Chapter 2001 (Administrative Procedure), Government Code, and the rulemaking requirements of that subchapter do not apply to a request for an advisory opinion or any advisory opinion issued by the commission.

(e) Specifies that nothing in this section precludes the commission from requesting an attorney general opinion under Section 402.042, (Questions of Public Interest and Official Duties), Government Code. Provides that in the event the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request under this section, the deadlines established under subsection (d) are tolled until thirty days following the issuance of the attorney general opinion.

(f) Authorizes the commission to delegate all or part of the authority and procedures for issuing advisory opinions under this section to an employee of the commission.

SECTION 3. Amends Section 2001.103, Occupations Code, by adding Subsections (e)-(h), as follows:

(e) Authorizes an authorized organization that holds a regular license to conduct bingo, notwithstanding Subsection (c), to receive not more than 12 temporary licenses during the 12-month period following the issuance or renewal of the license.

(f) Authorizes an authorized organization that holds a regular license to conduct bingo to apply for all or any portion of the total number of temporary licenses to which the organization is entitled under Subsection (e) in one application without stating the days or times for which the organization will use the temporary licenses.

(g) Requires an organization that has been issued a temporary license under Subsection (f) to notify the commission of the specific date and time of the bingo occasion for which the temporary license will be used before using the license. Provides that if the commission receives the notification by noon of the day before the day the temporary license will be used, the commission must verify receipt of the notice before the end of the business day on which the notice is received. Requires the commission, if the commission does not receive the notification by noon of the day before the day the temporary license will be used, to verify receipt of the notice before noon of the business day that follows the day the commission received the notice.

(h) Authorizes a verification under Subsection (g) to be delivered by facsimile, e-mail, or any other means reasonably contemplated to arrive before the time the temporary license will be used.

SECTION 4. Amends Section 2001.104, Occupations Code, by adding Subsection (d), to require an applicant to pay the fees established under Subsection (a) annually. Authorizes an applicant for a license or renewal of a license to obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 5. Amends Section 2001.105, Occupations Code, by adding Subsection (c), to provide that except as provided by Section 2001.104(d), a license issued under this subchapter is effective for one year.

SECTION 6. Amends Subchapter C, Chapter 2001, Occupations Code, by adding Section 2001.108, as follows:

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) Authorizes a licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo to file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo, if the other organization has ceased, or will cease, conducting bingo at that time and premises. Requires the application to state whether the other organization has ceased conducting bingo at

that time and premises because certain conditions exist.

(b) Provides that if the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission.

(c) Provides that if the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission or the date on which the termination takes effect, whichever is later.

(d) Authorizes the licensed organization, if the commission fails to act within the time provided by Subsection (b) or (c), to act as if the change in premises or bingo occasions has been approved by the commission and to conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Authorizes the commission, notwithstanding Subsection (d), to issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. Provides that the commission is not required to act on a joint application under Subsection (a) within the time provided by this section for the additional temporary licenses if the number of additional temporary licenses is sufficient to allow the other organization at the location to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

SECTION 7. Amends Section 2001.152, Occupations Code, by adding Subsection (c) to authorize the commission, notwithstanding Subsection (a), to issue a commercial lessor license under Subsection (a)(2) or (3) only if there is not a licensed commercial lessor whose premises is located in the county in which an applicant for a license under Subsection (a)(2) or (3) proposes to locate a bingo premises. Provides that this subsection does not prohibit the renewal of an existing license. Provides that this subsection expires September 1, 2005.

SECTION 8. Amends Section 2001.158, Occupations Code, by adding Subsection (d) to require an applicant for a commercial lessor license to pay the fees established under Subsection (a) annually. Authorizes an applicant for a license or renewal of a license to obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 9. Amends Section 2001.159(c), Occupations Code, to make a conforming change.

SECTION 10. Amends Section 2001.214, Occupations Code, as follows:

(a) Makes a conforming change.

(b) Authorizes a manufacturer or distributor to obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$1,000.

SECTION 11. Amends Section 2001.218(a), Occupations Code, to add the words "or lease" to existing text, regarding bingo supplies and equipment.

SECTION 12. Amends Section 2001.307, Occupations Code, to provide that, except as otherwise provided by this chapter, a license issued under this chapter may not be effective for more than one year.

SECTION 13. Amends Subchapter G, Chapter 2001, Occupations Code, by adding Sections 2001.313 and 2001.314, as follows:

Sec. 2001.313. REGISTRY OF APPROVED BINGO WORKERS. (a) Requires the commission, to minimize duplicate criminal history background checks by the commission and the costs incurred by organizations and individuals, to maintain a registry of persons on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator.

(b) Authorizes a person listed in the registry to be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

(c) Requires the commission to make the registry information available to the public by publishing it on the commission's website and by responding to telephone, e-mail, and facsimile requests. Provides that this subsection does not require the commission to disclose information that is confidential by law.

(d) Prohibits a person who is not listed on the registry established by this section from acting as an operator, manager, cashier, usher, caller or sales person for a licensed authorized organization.

(e) Authorizes the commission, after notice and a hearing, to refuse to add a person's name to, or to remove a person's name from, the registry established by this section under certain conditions.

(f) Requires a licensed authorized organization to report to the commission or its designee the discovery of any conduct on the part of a person registered or required to be registered under this section where there is substantial basis for believing that the conduct would constitute grounds for removal of the person's name from, or refusal to add the person's name to, the registry established by this section. Prohibits a statement made in good faith to the commission or to an adjudicative body in connection with any such report from being the basis for an action for defamation of character.

(g) Provides that a person who has been finally determined to have taken action prohibited by Subsection (e)(2),(3),(4), or (5) cannot be listed on the registry of approved bingo workers for one year from the date of such determination. Establishes that upon expiration of the one year period, the person is eligible for listing on the registry provided a licensee subject to this chapter makes application to the list the person. Requires the commission, in such event, to take into consideration the facts and circumstances that occurred that lead to the applicable action under subparagraph (e) (2)-(5) in deciding whether to list the person on the registry.

Sec. 2001.314. IDENTIFICATION CARD FOR APPROVED BINGO WORKER. (a) Authorizes the commission to require a person listed in the registry maintained under Section 2001.313 to wear an identification card to identify the person to license holders, bingo players, and commission staff while the person is on duty during the conduct of bingo. Requires the commission by rule to prescribe the form and content of the card.

(b) Requires the commission to provide the identification card and requires the commission to provide a form to be completed by a person that allows the person to prepare the identification card. Requires the commission to collect a reasonable charge to cover the cost of providing the card or form.

(c) Requires an identification card required by the commission under this section to be worn by a person while on duty during the conduct of bingo to be in substantial

compliance with the form and content requirements prescribed by the commission under this section.

(d) Prohibits the commission from requiring any other person licensed under this chapter, or a person acting on the license holder's behalf, to wear an identification card, whether or not the person is present or performing the person's duties during the conduct of bingo.

SECTION 14. Amends Section 2001.411, Occupations Code, by adding Subsection (e) to prohibit the commission from prohibiting an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. Provides that this subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

SECTION 15. Amends Subchapter I, Chapter 2001, Occupations Code, by adding Section 2001.4115, as follows:

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Authorizes two or more licensed authorized organizations conducting bingo at the same premises to jointly hire bingo employees. Authorizes one organization to act as the employee's employer and the other organization to reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. Provides that a reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

SECTION 16. Amends Section 2001.413, Occupations Code, to make a conforming change.

SECTION 17. Amends Section 2001.415, Occupations Code, as follows:

- (a) Adds "licensed commercial lessor" to existing text relating to advertisements.
- (b) Makes a conforming change.

SECTION 18. Amends Subchapter I, Chapter 2001, Occupations Code, by adding Section 2001.4155, as follows:

Sec. 2001.4155. GIFT CERTIFICATES. (a) Provides that nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

(b) Requires a licensed authorized organization or licensed commercial lessor that distributes or accepts a gift certificate to keep adequate records relating to the gift certificate as provided by commission rule.

SECTION 19. Amends Chapter 2001, Occupations Code, by adding Subchapter I-1, as follows:

SUBCHAPTER I-1. UNIT ACCOUNTING.

Sec. 2001.431. DEFINITIONS. Defines "unit," "unit accounting," "unit account agreement," and "unit manager."

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Authorizes two or more licensed authorized organizations to form and operate a unit as provided by this subchapter by executing a unit accounting agreement; and stating in the unit accounting agreement whether the unit will use a unit manager or a designated agent.

(b) Authorizes more than one unit to be formed at a single location. Prohibits a licensed authorized organization from being a member of more than one unit.

(c) Provides that this subchapter does not require a licensed authorized organization to join a unit. Specifies that except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) Authorizes the members of a unit to determine whether to allow another licensed authorized organization to join the unit. Provides that the terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Sec. 2001.433. **APPLICABILITY OF CHAPTER.** Provides that a licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Sec. 201.434. **CONDUCT OF BINGO.** (a) Requires each licensed authorized organization that is a member of the unit to conduct its bingo games separately from the bingo games of other members of the unit.

(b) Authorizes a unit to purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) Authorizes a licensed distributor to sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Sec. 2001.435. **UNIT ACCOUNTING.** (a) Requires a unit to meet certain requirements.

(b) Requires each member of a unit to deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prize under Sections 2001.420(a) and (b). Requires the deposit to be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(c) Requires all authorized expenses and distributions of the units and its members to be paid from the unit's bingo checking account.

Sec. 2001.436. **DISBURSEMENT OF FUNDS BY DISSOLVED UNIT.** (a) Provides that Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. Requires, for purposes of this subchapter, the requirements of Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization to be applied to a unit.

(b) Requires a unit that has dissolved for any reasons and has unexpected bingo funds to disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) Defines "adjusted gross receipts" and "cost of goods purchased by a unit."

Sec. 2001.437. **UNIT MANAGER; LICENSE.** (a) Provides that if the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, then the unit manager is responsible for certain actions.

(b) Requires a unit with a unit manager to notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) Prohibits a person from providing services as a unit manager to licensed authorized

organizations that form a unit unless the person holds a unit manager license under this subchapter. Provides that a person designated as an agent under Section 2001.438(b) is not a unit manager on account of that designation for purposes of this section.

(d) Requires an applicant for a unit manager license to file with the commission a written application on a form prescribed by the commission that includes certain information.

(e) Requires the commission by rule to establish an annual license fee for a unit manager license in an amount reasonable to defray administrative costs plus any costs incurred to conduct a criminal background check.

(f) Requires a person who holds a unit manager to post a bond or other security pursuant to Section 2001.514.

(g) Provides that a person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person, meets certain criteria.

(h) Requires a unit manager to complete the training required by Section 2001.107.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) Provides that this section applies to a unit if the unit accounting agreement for the unit does not state that a unit will be responsible for compliance with the rules of the commission and this chapter; or states that the unit will use a designated agent.

(b) Requires the unit to designate with the commission an agent who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the commission.

(c) Prohibits certain persons from being the agent designated under Subsection (b).

(d) Requires the unit to immediately notify the commission of any change in the agent designated by Section 2001.107.

(f) Requires each licensed authorized organization that is a member of the unit to be jointly and severally liable to meet certain requirements.

(g) Authorizes each licensed authorized organization that is a member of the unit to be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules pertaining to the operation of the unit.

Sec. 2001.439. TRUST AGREEMENT. (a) Authorizes a unit, notwithstanding any other provision of this subchapter, to be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. Requires the agreement to meet certain requirements.

(b) Authorizes the commission by rule to prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) Authorizes the commission to prohibit a person who serves as designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as

an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

SECTION 20. Amends Section 2001.451, Occupations Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Makes a conforming change.

(b-1) Authorizes a licensed authorized organization to deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

SECTION 21. Amends Section 2001.454, Occupations Code, as follows:

(a) Requires a licensed authorized organization to devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises.

(b) Provides that except as otherwise provided by law, the net proceeds derived from bingo and any rental of premises are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. Provides that if the organization is not required to obtain a federal tax exemption under 26 U.S.C. 501, the organization's net proceeds are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.002. Deletes text relating to use of net proceeds for charitable purposes.

SECTION 22. Amends Section 2001.458(a), Occupations Code, to prohibit an item of expense from being incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for certain functions.

SECTION 23. Amends Section 2001.459(a), Occupations Code, to require advertising, including the cost of bingo gift certificates, to be paid from an organization's bingo account.

SECTION 24. Amends Section 2001.504(a), Occupations Code, to provide that a tax or fee 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 quarterly on or before the 25th, rather than the 15th, day of the month succeeding each calendar quarter.

SECTION 25. Amends Section 2001.602(b), Occupations Code, to delete "executive" as a modifier for director.

SECTION 26. Amends Sections 2001.603(a) and (b), Occupations Code, to make conforming changes.

SECTION 27. Amends Section 2001.604, Occupations Code, to make conforming changes.

SECTION 28. Amends Section 2001.605(a), Occupations Code, to make a conforming change.

SECTION 29. Amends Section 2001.606, Occupations Code, as follows:

Sec. 2001.606. New heading: DECISION BY DIRECTOR.

(a) and (b) Make conforming changes.

SECTION 30. Amends Sections 2001.607(b) and (c), Occupations Code, to make conforming changes.

SECTION 31. Amends Section 2001.608, Occupations Code, to make a conforming change.

SECTION 32. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3105, as follows:

Sec. 151.3105. BINGO EQUIPMENT PURCHASED BY CERTAIN ORGANIZATIONS. Provides that bingo equipment, as defined by Section 2001.002, Occupations Code, is exempted from the taxes imposed by this chapter if the bingo equipment meets certain criteria.

SECTION 33. Repealer: Section 2001.409(b), Occupations Code.

SECTION 34. (a) Makes application of the provisions of this Act regarding eligibility for a license prospective.

(b) Makes application of the provisions of this Act regarding charitable disbursements prospective to the second quarter of 2004.

(c) Authorizes an authorized organization licensed to conduct bingo before the effective date of this Act to renew its license, notwithstanding that the organization has not been in existence for the time required under a rule of the commission adopted under Section 2001.101, Occupations Code, if the organization meets all the requirements for the renewal of the license.

SECTION 35. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this section.

(b) Provides that Section 151.3105, Tax Code, as added by this Act, takes effect January 1, 2004.