

BILL ANALYSIS

Senate Research Center

H.B. 2519
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Government Organization
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Engrossed

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.

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 16 (Section 2001.314, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.002, Occupations Code, by amending Subdivision (5) and adding Subdivision (29), to redefine “bingo equipment” and to require “sale” to only refer to the transfer of title to equipment or other items from a seller to a buyer.

SECTION 2. Amends Section 2001.051(b), Occupations Code, to provide that the Texas Lottery Commission (commission) does not have regulatory authority over certain matters or persons.

SECTION 3. Amends Section 2001.053, Occupations Code, as follows:

- (a) Subsection created from existing text.
- (b) Prohibits an officer or investigator employed by the commission from carrying a firearm or badge and from wearing a hat, uniform, or other clothing with any type of insignia indicating the officer's or investigator's official position, while conducting a routine inspection of bingo premises or a business office of a licensed authorized organization.

SECTION 4. Amends Section 2001.055, Occupations Code, as follows:

- (a) Subsection created from existing text.
- (b) Requires the commission, to the extent consistent with this chapter, to support the efforts of licensed authorized organizations to develop and offer new types of bingo games and to apply new technology to bingo games.

SECTION 5. 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 director of the bingo division an advisory opinion regarding compliance with this chapter and the rules of the policy board.

(b) Requires the director of the bingo division to respond to a request under Subsection (a) not later than the 30th day after the date a request is received, unless the director determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. Requires the director, 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 director, if the director requests additional information, to respond to the request not later than the 30th 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.

SECTION 6. 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 7. 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 8. 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 9. 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 to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

SECTION 10. 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 11. 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 12. Amends Section 2001.159(c), Occupations Code, to make a conforming change.

SECTION 13. 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 14. Amends Section 2001.218(a), Occupations Code, to add the words "or lease" to existing text, regarding bingo supplies and equipment.

SECTION 15. Amends Section 2001.307, Occupations Code, to provide except as otherwise provided by this chapter, a license issued under this chapter may not be effective for more than one year.

SECTION 16. 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.

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

(c) Provides that a person is not required to obtain the identification card or form from the commission, but may obtain a substantially identical card or form from another source.

(d) 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.

(e) 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 17. 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 18. 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 19. Amends Section 2001.413, Occupations Code, to make a conforming change.

SECTION 20. Amends Section 2001.415, Occupations Code, to add "licensed commercial lessor" to existing text relating to advertisements.

SECTION 21. 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 or licensed commercial lessor from distributing or accepting a gift certificate that entitles the bearer of the certificate to enter bingo premises or 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 22. 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 23. 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 under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. Deletes text relating to use of net proceeds for charitable purposes.

SECTION 24. 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 25. 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 26. Amends Subchapter K, Chapter 2001, Occupations Code, by adding Section 2001.5015, as follows:

Sec. 2001.5015. MANUFACTURER GROSS RECEIPTS TAX. (a) Provides that a tax is imposed on the sale of bingo equipment by a manufacturer to a licensed distributor for use in the conduct of bingo in this state.

(b) Provides that the tax rate is the rate that, if applied to the total amount of gross

receipts from all sales of bingo equipment described by Subsection (a) for the most recent four calendar quarters for which the information is available, would generate an amount of revenue equal to the total amount of taxes that would have been imposed under Chapter 151, Tax Code, for the most recent four calendar quarters for which the information is available on all sales of bingo equipment to licensed authorized organizations that are exempt from taxation under Section 151.3105, Tax Code, if those sales had been subject to taxation under Chapter 151, Tax Code.

(c) Requires the commission to set the tax rate under Subsection (b) for each calendar year not later than January 1 of the year. Requires the comptroller of public accounts (comptroller) to certify to the commission the information available to the comptroller that the commission requires to set the tax rate.

(d) Provides that the other provisions of this subchapter applicable to another tax or fee imposed under this subchapter apply to the tax imposed by this section to the extent those provisions can be made applicable.

SECTION 27. Amends Section 2001.504(a), Occupations Code, to provide 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 28. Amends Section 2001.602(b), Occupations Code, to delete “executive” as a modifier for director.

SECTION 29. Amends Sections 2001.603(a) and (b), Occupations Code, to make conforming changes.

SECTION 30. Amends Section 2001.604, Occupations Code, to make conforming changes.

SECTION 31. Amends Section 2001.605(a), Occupations Code, to make a conforming change.

SECTION 32. Amends Section 2001.606, Occupations Code, as follows:

Sec. 2001.606. New heading: DECISION BY DIRECTOR.

(a) and (b) Make conforming changes.

SECTION 33. Amends Sections 2001.607(b) and (c), Occupations Code, to make conforming changes.

SECTION 34. Amends Section 2001.608, Occupations Code, to make a conforming change.

SECTION 35. 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 36. Repealer:

- (1) Section 2001.409(b) (relating to card-minding devices), Occupations Code; and
- (2) Section 2001.410(c) (relating to pull-tab devices), Occupations Code.

SECTION 37. Makes application of this Act prospective.

SECTION 38. (a) Effective date: September 1, 2003 except as provided by Subsections (b) and (c) of this section.

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

(c) Provides that the tax imposed under Section 2001.5015, Occupations Code, as added by this Act, applies beginning January 1, 2004. Requires the Texas Lottery Commission to set the tax rate under that section for the 2004 calendar year not later than January 1, 2004.