

## **BILL ANALYSIS**

Senate Research Center

H.B. 1434  
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Government Organization  
5/19/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

H.B. 405 is the Lottery Commission Sunset Bill. The bill increases the Texas Lottery Commission's (commission) size from three to five public members. The bill requires the commission rather than the executive director to review and approve all major expenditures as well as develop a business plan. The bill requires the Bingo Advisory Committee to develop an annual work plan to more effectively advise the commission. The bill improves the commission's ability to effectively and consistently enforce bingo laws, by requiring the commission to adopt rules governing bingo compliance monitoring and enforcement procedures and expanding the commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.

H.B. 1434 continues the Texas Lottery Commission for another 12 years.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 3 (Section 466.1005, Government Code), SECTION 12 (Section 467.112, Government Code), SECTION 13 (Section 2001.0555, Occupations Code), SECTION 16 (Section 2001.3015, Occupations Code), SECTION 18 (Section 2001.351, Occupations Code), SECTION 19 (Section 2001.353, Occupations Code), SECTION 20 (Section 2001.355, Occupations Code), SECTION 21 (Sections 2001.358, Occupations Code), SECTION 31 (Section 2001.3015, Occupations Code), SECTION 33 (Section 2001.351, Occupations Code,) SECTION 34 (Section 2001.353, Occupations Code), SECTION 35 (Section 2001.355, Occupations Code), and SECTION 36 (Section 2001.358, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 466.014, Government Code, by adding Subsection (d), to require a contract between the lottery division (division) and a lottery operator under Subsection (b) to contain a provision allowing the contract to be terminated without penalty if the division is abolished.

SECTION 2. Amends Subchapter B, Chapter 466, Government Code, by adding Section 466.027, as follows:

Sec. 466.027. COMPREHENSIVE BUSINESS PLAN. Requires the Texas Lottery Commission (commission) to develop a comprehensive business plan to guide the commission's major initiatives. Sets forth the specific minimum requirements for the plan relating to commission programs and projects. Requires the commission at least annually to review the plan to assess the overall performance and value of each program and project.

SECTION 3. Amends Section 466.101, Government Code, as follows:

Sec. 466.101. PROCUREMENT PROCEDURES. Provides that the general law governing purchasing and contracts by state agencies applies to the commission except as otherwise provided by this subchapter. Deletes the text of the existing section.

SECTION 4. Amends Sections 466.151, Government Code, by amending Subsection (d) and adding Subsection (f) and (g), as follows:

(d) Prohibits a license from being transferred or assigned to any other person, rather than any other person or location.

(f) Authorizes the commission to amend, on application by a license holder, a license to change the location of a sales agency, under certain conditions.

(g) Sets forth certain requirements for an application for a license amendment under Subsection (f).

SECTION 5. Amends Subchapter D, Chapter 466, Government Code, by adding Section 466.158, as follows:

Sec. 466.158. RENEWAL OF EXPIRED LICENSE. (a) Provides that, notwithstanding Section 466.158, a person whose license has been expired for 10 days or less to renew the license if otherwise eligible for renewal by paying to the commission the required renewal fee and an additional fee equal to one-half of the amount of the renewal fee.

(b) Prohibits a person whose license has been expired for more than 10 days from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license under this subchapter.

SECTION 6. Amends Sections 466.160(a), Government Code, to authorize the commission to suspend a sales agent's license summarily without notice or hearing under certain conditions.

SECTION 7. Amends Section 466.022(b), Government Code, to authorize the director, rather than the executive director, to deny an application for a license or the commission to summarily suspend, suspend, or revoke a license if the applicant or sales agent fails on request to provide certain information. Makes nonsubstantive changes.

SECTION 8. Amends Subchapter F, Section 466, Government Code, by adding Section 466.257, as follows:

Sec. 466.257. STATE REVENUE ON PERCENTAGE WAGERED. Requires any game of chance operated under the commission's authority or regulated by the commission to generate revenue to this state an amount that is not less than 12 percent of the total amount wagered or otherwise paid to play or participate in the game of chance. Provides that this section does not apply to any game the commission was authorized to offer, conduct, operate, or regulate as of January 1, 2005.

SECTION 9. Amends Section 466.353, Government Code, by adding Subsection (c), to require an individual who ceases to be an officer, director, or owner of a sales agent to properly notify the director of that fact. Provides that failure to provide the notice does not relieve the individual from personal liability under Subsection (b), even if the individual is no longer an officer, director, or owner at the time the liability to the sales agent accrues.

SECTION 10. Amends Sections 466.405(e) to define "custodian," "financial institution," "guardian," "member of a minor's family," and "minor."

SECTION 11. Amends Section 467.002, Government Code, to provide that the commission is subject to Chapter 325 (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 466, and Chapter 2001, Occupations Code, expire September 1, 2017. Deletes existing text relating to a limited Sunset review.

Sec. 467.037. DIVISION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 12. Amends Sections 467.021(a) and (b), as follows:

- (a) Sets forth the composition of the commission.
- (b) Sets forth the provisions for making appointments to the commission.

SECTION 13. Amends Section 467.022, Government Code, as follows:

Sec. 467.022. TERM OF OFFICE. Sets forth the terms of office for commission members.

SECTION 14. Amends Section 467.024, Government Code, by adding Subsections (c) and (d), as follows:

- (c) Prohibits a person from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), under certain conditions.
- (d) Prohibits a person from acting as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 (Registration of lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 15. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.0255, as follows:

Sec. 467.0255. TRAINING. (a) Prohibits a person who is appointed to, and qualifies for, office as a member of the commission from voting, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) Sets forth the requirements of the training program.

(c) Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 16. Amends Sections 467.026(a) and (c), Government Code, as follows:

- (a) Sets forth certain conditions for removal of a member from the commission.
- (c) Requires the executive director, if he or she has knowledge that a potential ground for removal exists, to notify the presiding officer of the commission of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the commission who then is required to notify the governor and the attorney general that a potential ground for removal exists.

SECTION 17. Amends Section 467.032(a), Government Code, to require the commission to employ an executive director to administer this chapter and Chapter 466.

SECTION 18. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.0325, as follows:

Sec. 467.0325. BINGO OPERATIONS DIRECTOR. (a) Requires the commission to employ a director of bingo operations to administer this chapter in connection with the bingo division and Chapter 2001 (Bingo), Occupations Code.

(b) Authorizes the bingo operations director to contract with or employ a person to perform a function, activity, or service in connection with the administration and regulation of bingo.

(c) Provides that the bingo operations director serves at the will of the commission.

SECTION 19. Amends Section 467.033, Government Code, as follows:

Sec. 467.033. DIVISION DIRECTORS. Requires the executive director to employ a director to oversee each division other than the bingo division. Provides that a division director employed under this section serves at the will of the executive director and is specifically exempted from Chapter 654 (Position Classification), Government Code.

SECTION 20. Amends Section 467.034, Government Code, as follows:

Sec. 467.034 EMPLOYEES. (a) Creates this section from existing text. Requires the executive director, except as provided by Subsection (b), to employ other personnel necessary to administer the laws under the commission's jurisdiction.

(b) Requires the bingo operations director to employ personnel to administer Chapter 2001 (Bingo), Occupations Code. Provides that bingo division personnel serve at the will of the bingo operations director.

(c) Requires the executive director to employ the personnel who perform services for both the lottery division and the bingo division and provides that those employees serve at the will of the executive director.

SECTION 21. Amends Section 467.035, Government Code, by adding Subsection (b-1), to prohibit the commission from employing or continuing to employ a person who would be denied a license as a sales agent under Section 466.155.

SECTION 22. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.037, as follows:

Sec. 467.037. DIVISION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 23. Amends the heading to Section 467.103, Government Code, to read as follows:

Sec. 467.103. DUTIES OF EXECUTIVE DIRECTOR AND BINGO OPERATIONS DIRECTOR.

SECTION 24. Amends Section 467.103(a), Government Code, to require the bingo operations director to perform all duties required by the commission to administer this chapter and the laws under the commission's jurisdiction. Prohibits the bingo operations director from holding other employment.

SECTION 25. Amends Section 467.104(b), Government Code, to require the executive director, except as provided by this subsection, to keep the records of the commission. Requires the bingo operations director to keep the records of the bingo division.

SECTION 26. Amends Subchapter C, Chapter 467, Government Code, by adding Sections 467.109-467.113, as follows:

Sec. 467.109. TECHNOLOGY POLICY. Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. Requires the policy ensure that the public is able to interact with the commission on the Internet.

Sec. 467.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Requires the commission to develop and implement a policy to encourage the use of certain rulemaking and alternative dispute resolution procedures. Requires the alternative dispute resolution procedures to conform to specific guidelines. Requires the commission to designate a trained person to perform certain duties relating to implementation, training, and effectiveness evaluation of said procedures.

Sec. 467.111. PUBLIC PARTICIPATION. Requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission.

Sec. 467.112. COMPLAINTS. Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission and to take certain actions relating to the investigation, resolution, and disposition of the complaint. Requires the commission by rule to require an investigation related to a complaint filed with the commission to be completed within a reasonable time frame.

Sec. 467.113. CONSUMER INFORMATION AND PROTECTION. Requires the commission to identify applicable laws governing consumer information and protection and adopt policies to ensure that the commission complies with those laws.

SECTION 27. Amends Section 2001.002(5), Occupations Code, by redefining "bingo equipment."

SECTION 28. Amends Subchapter B, Chapter 2001, Occupations Code, by adding Section 2001.0555, as follows:

Sec. 2001.0555. COMPLIANCE MONITORING. Requires the commission to adopt rules to govern the commission's monitoring of a license holder to determine if the license holder is in compliance with this chapter or rules adopted by this chapter. Requires the rules, at a minimum, to address audits and inspections and other compliance and enforcement activities.

SECTION 29. Amends Section 2001.057, Occupations Code, by adding Subsections (h) and (i), as follows:

(h) Requires the bingo advisory committee (committee) to annually develop a work plan detailing the committee's objectives and the issues to be addressed by the committee during that year. Sets forth specific issues and trends to be addressed by the plan.

(i) Requires the committee to perform a review at the end of each year to accomplish certain objectives.

SECTION 30. Amends Section 2001.101, Occupations Code, to authorize the commission to license a person to conduct bingo if the person has been in existence for the time required by commission rule to ensure the continuity and bona fide nature of the organization and the person meets certain criteria. Deletes existing text requiring various entities to have been in existence for specified lengths of time. Makes conforming and nonsubstantive changes.

SECTION 31. Amends Subchapter G, Chapter 2001, Occupations Code, by adding Section 2001.3015, as follows:

Sec. 2001.3015. LICENSING RULES. Requires the commission, by rule, to establish comprehensive qualifications for a person to be licensed or the person's license to be renewed under this chapter, develop a standard renewal process, and establish standards of conduct for a person licensed under this chapter.

SECTION 32. Amends the heading to Subchapter H, Chapter 2001, Occupations Code, to read as follows:

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINE OF LICENSE HOLDERS.

SECTION 33. Amends Section 2001.351, Occupations Code, as follows:

Sec. 2001.351. DENIAL OF LICENSE. (a) Creates this subsection from existing text.

(b) Requires the commission, in making the determination whether to renew a license, to consider the compliance history of a license holder. Requires the commission to adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(c) Authorizes the commission, after the opportunity for a hearing, to deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas considered by the commission in accordance with the rules adopted under Subsection (b).

SECTION 34. Amends Section 2001.353, Occupations Code, as follows:

Sec. 2001.353. New heading: DISCIPLINE OF LICENSE HOLDERS. (a) Creates this subsection from existing text. Requires, rather than authorizes, the commission, after a hearing, to suspend, revoke, or refuse to renew a license issued under this chapter or reprimand the license holder for certain actions.

(b) Authorizes the commission to place on probation a person whose license is suspended. Authorizes the commission, if the license suspension is probated, to require the person to take comply with certain conditions.

(c) Requires the commission by rule to adopt written guidelines to ensure that a probation is administered consistently, and develop a system to track compliance with the probation requirements.

SECTION 35. Amends Section 2001.355, Occupations Code, by amending Subsection (b ) and adding Subsection (d), (e), and (f), as follows:

(b) Requires the director of bingo operations, before temporarily suspending a license, to follow any prehearing rules adopted by the commission to determine if the license holder' continued operation may constitute a financial loss to this state, which includes a license holder's failure to remit taxes under Section 2001.501 (Gross Rentals Tax), Occupations Code or prize fee payments under Section 2001.502 (Prize Fee), Occupations Code to the commission as required by those sections.

(d) Requires the commission to adopt rules to govern the temporary suspension of a license under this section.

(e) Requires the commission, if the commission temporarily suspends the licenses of a licensed authorized organization that conducts bingo at a location at which other licensed authorized organizations conduct bingo, to perform certain tasks.

(f) Provides that a limitation on the number of temporary licenses to be issued to a licensed authorized organization provided by another provision of this chapter does not apply to temporary licenses issued under Subsection (e)(2)(B) under certain conditions.

SECTION 36. Amends Subchapter H, Chapter 2001, Occupations Code, by adding Section 2001.358, as follows:

Sec. 2001.358. SCHEDULE OF SANCTIONS; TIMELINE. Requires the commission, by rule, to adopt a schedule of sanctions that defines and summarizes violations of this chapter or commission rules adopted under this chapter to ensure that sanctions imposed are appropriate to the violation. Sets forth requirements for the schedule. Requires the commission, by rule, to establish a timeline for resolution of a violation of this chapter or

commission rules adopted under this chapter. Requires the rules to include certain elements.

SECTION 37. Amends Section 2001.407(a), Occupations Code, to delete existing text relating to an exception provided by Section 2001.257(b) (Powers Of System Service Provider), Occupations Code.

SECTION 38. Amends Section 2001.459(a), Occupations Code, to delete a provision requiring a payment for services provided by a system service provider to be paid from an organization's bingo account.

SECTION 39. Amends Section 2001.553(a), Occupations Code, to delete existing text providing that a person commits an offense if a person sells or attempts to induce the sale of automated bingo services. Makes conforming and nonsubstantive changes.

SECTION 40. Repealer: Sections 466.003, (Application of Sunset Act), 466.102, (Liquidated Damages, Performance Bond), 466.104, (Assistance of General Services Commission), 466.105, (Applicability of Other Law), 466.106, (Preference for Texas Businesses), 466.107, (Minority Businesses), 466.108, (Television Contracts), 467.032(c) (Executive Director), and 2054.007(a), (Exception: State Lottery Operations), Government Code; Sections 2001.002(3) (Definitions), 2001.052 (Director of Bingo Operations), 2001.057(b) (Bingo Advisory Committee), and 2001.553(b) (Unlicensed Sales; Offense), Occupations Code; and Subchapter F, Chapter 2001 (System Service Provider License), Occupations Code.

SECTION 41. Requires the Texas Lottery Commission, not later than March 1, 2006, to adopt all rules, plans, policies, schedules, and fees as required by specific sections of this Act.

SECTION 42. Provides that the amendment by this Act of Section 2001.002, Occupations Code, prevails over any conflicting act of the 79th Legislature, Regular Session, 2005, regardless of the relative dates of enactment.

SECTION 43. (a) Provides that the changes in law made by this Act in the prohibitions or qualifications applying to a member of the Texas Lottery Commission do not affect the entitlement of a member serving on the commission immediately before September 1, 2005, to continue to serve and function as a member of the commission for the remainder of the member's term. Provides that those changes in law apply only to a member appointed on or after September 1, 2005.

(b) Requires the governor, promptly after this Act takes effect, to appoint two additional members to the commission. Requires the governor, in appointing those members, to appoint one person to a term expiring February 1, 2009, and one to a term expiring February 1, 2011.

(c) Makes application of this Act to Chapter 467 (Texas Lottery Commission), Government Code, prospective.

(d) Makes application of this Act prospective.

(e) Makes application of this Act under Chapter 2001 (Bingo), Occupations Code, prospective.

SECTION 44. Effective date: September 1, 2005.