

CHAPTER 286

H.B. No. 2771

AN ACT

relating to the regulation of bingo; providing penalties; imposing taxes.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 2(10), (20), and (22), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(10) "Net proceeds" means:

(A) in relation to the gross receipts from one or more occasions of bingo, the amount that remains after deducting the reasonable sums necessarily and actually expended for advertising, security, repairs to premises and equipment, bingo supplies and equipment, prizes, stated rental, or mortgage and insurance expenses, if any, bookkeeping, legal, or accounting services, fees for personnel as permitted under Subsection (c) of Section 19 of this Act, janitorial services and utility supplies and services, if any, license fees, and the fee on prizes imposed by Section 19b of this Act ~~[gross receipts tax]~~; and

(B) in relation to the gross rent or other consideration received by an organization licensed to conduct bingo for the use of its premises, fixtures, or equipment by another licensee, the amount that remains after deducting the reasonable sums necessarily and actually expended for janitorial services and utility supplies directly attributable to the use of the premises, fixtures, or equipment, if any.

(20) "Commission" means the Texas Lottery ~~[Alcoholic Beverage]~~ Commission.

(22) "Bingo equipment" means equipment actually used, made, or sold for the purpose of use in bingo games and includes machines or other devices from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called, the balls or items themselves, bingo cards, and any other device commonly used in the direct operation of the game. "Bingo equipment" does not include:

(A) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is actually used in a bingo game subject to regulation under this Act; or

(B) commonly available component parts of bingo equipment such as light bulbs, fuses, or bingo balls.

SECTION 2. Sections 11(f) and (t), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) A series of prizes offered or awarded on any one bingo occasion for bingo games other than instant bingo may not aggregate more than \$2,500. ~~[A series of prizes offered or~~

awarded on any one bingo occasion for games of instant bingo may not aggregate more than \$1,500.]

(t) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of *bingo cards* or of a used bingo flashboard or blower to another licensed authorized organization.

SECTION 3. Section 12(d), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) An authorized organization may receive a temporary license for the conduct of bingo games on filing with the commission an application, on a form prescribed by the commission, accompanied by a \$25 license fee. A temporary license is valid for four hours during any one day. An organization may receive no more than six temporary licenses in a calendar year. An organization operating under a temporary license is subject to the *taxes and fees* [~~gross receipts tax~~] authorized or imposed by this Act and the other provisions of this Act to the extent they can be made applicable.

SECTION 4. Section 13(n), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(n) A commercial license to lease bingo premises to a licensed authorized organization may be issued only to:

(1) an authorized organization licensed to conduct bingo that owns or leases premises on which bingo is or will be conducted *or an association of authorized organizations licensed to conduct bingo that jointly own or lease premises on which bingo is or will be conducted* and that the organization *or association* leases or offers for lease to one or more other authorized organizations to conduct bingo;

(2) a person who leases premises to a single licensed authorized organization that subleases or will sublease the premises to one or more other licensed authorized organizations to conduct bingo on the premises; or

(3) a person who leases premises for the total control and exclusive use of only one licensed organization as that organization's primary business office.

SECTION 5. Sections 13(c), (f), and (j), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The commission shall issue to an applicant a license for the conduct of bingo, or a license renewal, on payment of a license fee in accordance with Subdivision (1) of Subsection (d) of this section, if the commission determines that:

(1) the member or members of the applicant designated in the application to conduct bingo are active members of the applicant;

(2) no person under whose name the game or games of bingo will be conducted, and no person who will work at the proposed bingo games, has been convicted of a felony, gambling offense, criminal fraud, or a crime of moral turpitude for which less than 10 years have elapsed since termination of any sentence, parole, mandatory supervision, or probation served for the offense;

(3) the games are to be conducted in accordance with this Act;

(4) the proceeds of the games are to be disposed of as provided by this Act;

(5) ~~[no prize will be offered or given in excess of the limits set by Section 11(e) of this Act in any single game and that the aggregate of all prizes offered and given in all of the games conducted on a single occasion under the license will not exceed the limits set by Section 11(f) of this Act;~~

[(6)] the applicant has made and can demonstrate significant progress toward the accomplishment of the purposes of the organization during the 12-month period preceding the date of application for a license or license renewal; and

[(7)] all persons who will conduct, promote, or administer the proposed bingo games are active, bona fide members of the applicant organization and all other persons who will assist in conducting, promoting, or administering the proposed bingo games are persons authorized to do so by Section 19 of this Act.

(f) *A person who leases premises on which bingo is conducted is not required to be a licensed commercial lessor unless the person leases directly to a licensed authorized organization [The commission may not issue a license to an applicant seeking to conduct bingo on the premises of a licensed commercial lessor if the premises presently owned or occupied by the applicant are adequate and suitable for conducting bingo games. The burden is on the applicant to establish by clear and convincing proof that the premises it presently owns or occupies are not adequate and suitable for conducting games. It is the intent of this subsection to encourage licensed organizations to use their own facilities if possible, to discourage the commercialization of bingo, and to maximize the availability of bingo proceeds for application by an authorized organization to its authorized purposes].*

(j) *A license may not be transferred by a licensee, except that, in accordance with commission rules, a licensed commercial lessor who is an individual may transfer the individual's license to a corporation formed by the individual.*

SECTION 6. Section 13(o), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(o) *Notwithstanding Subsection (n) of this section, a person who was licensed as a commercial lessor on June 10, 1989, whose license has been kept in effect since that date, and who is otherwise eligible for the license may renew the license as a commercial lessor of bingo premises [according to the terms of the license as those terms existed on June 10, 1989].*

SECTION 7. Section 13c, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended by adding Subsection (k) to read as follows:

(k) *The commission shall require the licensee to prominently post the toll-free "800" telephone number established by the Texas Commission on Alcohol and Drug Abuse under Section 461.018, Health and Safety Code, on signs provided by the Texas Council on Problem and Compulsive Gambling near the exit and at other appropriate places on the premises at each bingo occasion.*

SECTION 8. The Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) is amended by adding Section 13f to read as follows:

Sec. 13f. ACCESS TO INTERNAL REVENUE SERVICE INFORMATION. (a) The commission may obtain information relating to a person's qualification for licensing under this Act from the Internal Revenue Service under a contract between the comptroller and the Internal Revenue Service on:

- (1) *an operator or an applicant to act as an operator of bingo occasions; or*
- (2) *an applicant for a license to act or a person who holds a license to act as a commercial lessor.*

(b) *All information received by the commission from the Internal Revenue Service is confidential and may only be used as provided by the contract between the comptroller and the Internal Revenue Service under which the information was obtained.*

(c) *A person commits an offense if the person releases or discloses any information obtained under this section except on court order. An offense under this subsection is a Class A misdemeanor.*

(d) *The comptroller shall adopt rules governing the custody and use of information obtained under this section.*

SECTION 9. Section 16(e), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) *After a hearing, the [The] commission may suspend or revoke any license issued under this Act for failure to comply with this Act or a rule adopted by the commission under this Act, or for any reason that would allow or require the commission to refuse to issue or renew a license of the same class. The commission may summarily suspend a license issued under this Act for failure to comply with this Act or a rule adopted by the commission under this Act if the commission determines that the licensee's continued operation may constitute an immediate threat to the health, safety, morals, or welfare of the public. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of a summary suspension under this section.*

SECTION 10. The Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) is amended by adding Sections 16a and 16b to read as follows:

Sec. 16a. ADMINISTRATIVE PENALTIES. (a) The commission may assess an administrative penalty against the holder of a license under this Act who violates a provision of this Act or a rule or order adopted by the commission under this Act as provided by this section.

(b) The penalty for each violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the executive director of the commission shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;*
- (2) the history of previous violations;*
- (3) the amount necessary to deter future violations;*
- (4) efforts to correct the violation; and*
- (5) any other matter that justice may require.*

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the executive director determines that a violation has occurred, the executive director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (c) of this section.

(e) Not later than the 14th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is received, the person charged may accept the determination of the executive director made under Subsection (d) of this section, including the recommended penalty, or make a written request for a hearing on the determination.

(g) If the person charged with the violation accepts the determination of the executive director, the executive director shall issue an order approving the determination and ordering the payment of the recommended penalty.

(h) If the person charged requests a hearing or fails to timely respond to the notice, the executive director shall set a hearing and give notice of the hearing. The hearing examiner shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, the executive director by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(i) The executive director shall give notice of the executive director's order to the person charged. The notice shall include:

- (1) the findings of fact and conclusions of law separately stated;*
- (2) the amount of the penalty ordered, if any;*
- (3) a statement of the right of the person charged to judicial review of the executive director's order, if any; and*

(4) other information required by law.

(j) Not later than the 30th day after the date the executive director's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) If the executive director receives a copy of an affidavit under Subsection (k)(2) of this section, the executive director may file with the court not later than the fifth day after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 16b. **REMEDIES NOT EXCLUSIVE.** The commission may suspend or revoke a license under Section 16(e) of this Act, impose an administrative penalty under Section 16a of this Act, or both, depending on the severity of the violation.

SECTION 11. Sections 19(c) and (d), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Items of expense may not be incurred or paid in connection with the conduct of any game of bingo under any license issued under this Act except those that are reasonable and are necessarily expended for advertising, security, repairs to premises and equipment, bingo supplies and equipment, prizes, stated rental or mortgage and insurance expenses, if any, bookkeeping, legal, or accounting services related to bingo, fees in amounts authorized by the commission for callers, cashiers, and ushers, janitorial services and utility supplies and services, if any, and license fees. *The value of any health insurance or health benefit provided by a licensed authorized organization to an employee may not be included in the amount of a fee authorized by the commission.*

(d) ~~[A person may not be an operator for more than one licensed authorized organization, without regard to the person's membership status in licensed authorized organizations.]~~ The commission may adopt rules restricting involvement in the conduct, promotion, or administration of bingo by a licensed authorized commercial lessor, by a person having an interest in or who is active in a licensed authorized commercial lessor, or by a person related in the first degree by consanguinity or affinity, as determined under Article 5996h, Revised Statutes, to a person having an interest in or active in a licensed authorized commercial lessor, without regard to a person's membership status in a licensed authorized organization.

SECTION 12. Section 19a(k), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(k) Before the end of each quarter, each licensed authorized organization shall disburse for charitable purposes an amount not less than 35 percent of the organization's adjusted gross receipts from the last preceding quarter, less the amount of ~~[any credits allowed by rule for bingo gross receipts taxes and]~~ authorized expenses *not to exceed six percent of the gross receipts.* For purposes of this subsection, adjusted gross receipts means gross receipts plus any consideration received from the rental of premises for bingo by the authorized organization, less the amount of prizes paid in the preceding quarter. If a licensed authorized organization fails to meet the requirements of this subsection for a quarter, the commission in applying appropriate sanctions may consider whether, taking into account the amount required to be distributed during that quarter and the three preceding quarters and the charitable distributions for each of those quarters, the organization has distributed a total amount sufficient to have met the 35 percent requirement for that quarter and the three preceding quarters combined.

SECTION 13. Sections 19b(b) and (c), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The fee imposed by this section is *five* ~~[three]~~ percent of the amount or value of the prize.

(c) A licensed authorized organization shall report and remit the fee imposed by this section at the same time and in the same manner as the gross *rentals* ~~[receipts]~~ tax under Section 20 of this Act.

SECTION 14. The Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) is amended by adding Section 19c to read as follows:

Sec. 19c. **LOCAL SHARE OF FEE ON PRIZES.** (a) A county or municipality that imposed a gross receipts tax on the conduct of bingo games as of January 1, 1993, is entitled to a share of the fee imposed by Section 19b of this Act.

(b) *Except as provided by Subsection (d) of this section, a county to which this section applies is entitled to 50 percent of the fee collected under Section 19b of this Act on a prize awarded at a bingo game conducted in the county.*

(c) *Except as provided by Subsection (d) of this section, a municipality to which this section applies is entitled to 50 percent of the fee collected under Section 19b of this Act on a prize awarded at a bingo game conducted in the municipality.*

(d) *If a county and municipality are both entitled to a share of the fee imposed by Section 19b of this Act:*

(1) the county is entitled to 25 percent of the fee collected under Section 19b of this Act on a prize awarded at a bingo game conducted in the county; and

(2) the municipality is entitled to 25 percent of the fee collected under Section 19b of this Act on a prize awarded at a bingo game conducted in the municipality.

SECTION 15. Section 20, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. REPORTING AND DUE DATE OF TAXES AND FEES. The taxes and fees authorized or imposed by this Act are due and payable by the licensee or any person conducting bingo games without a license to the state treasurer quarterly on or before the 15th day of the month succeeding each calendar quarter. The report must be filed under oath on forms prescribed by the commission.

SECTION 16. Section 23, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. REPORT OF RECEIPTS, EXPENSES. (a) Each licensee conducting bingo games shall submit quarterly to the commission and to the comptroller of public accounts a report under oath containing the following information:

(1) the amount of the gross receipts derived from the games;

(2) each item of expense incurred or paid;

(3) each item of expenditure made or to be made, the name and address of each person to whom each item has been paid or is to be paid, with a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from the games;

(5) the use to which the proceeds have been or are to be applied; and

(6) a list of prizes offered and given, with their respective values.

(b) Each licensee shall maintain records to substantiate the contents of each report.

(c) A copy of each report shall be furnished to the appropriate governing body.

(d) A person is not eligible for a license or a license renewal unless all required reports, tax returns, and requested information have been filed in accordance with this Act.

(e) ~~[The commission by rule may provide for different tax reporting periods and record-keeping procedures for licensees by class based on the amount of gross receipts received by a licensee.]~~

[(f)] The commission shall make any required reports available to the comptroller of public accounts as the comptroller may direct.

SECTION 17. Section 26, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. TRANSMITTALS, REFUNDS, AND COLLECTIONS. (a) *The revenue collected from the fee on prizes imposed by Section 19b of this Act and sent to the state shall be deposited to the credit of a special account in the general revenue fund.*

(b) The commission shall determine the total amount of revenue deposited in the account from prizes awarded at bingo games in each county and each municipality entitled to a share under Section 19c of this Act.

(c) Quarterly, the commission shall send to each county and municipality entitled under Section 19c of this Act to a share of the fee on prizes the county's or municipality's share as determined under Sections 19c(b)-(d) of this Act.

(d) *The commission shall transfer any remaining amounts in the account to a nondedicated account in the general revenue fund.*

(e) Each jurisdiction's share of *the fee on prizes* [~~all gross receipts taxes~~] collected under [Section 3 of] this Act [by the commission] shall be transmitted to the treasurer or the officer of the jurisdiction performing the functions of that office by the commission payable to the jurisdiction [~~periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year.~~]. The funds so transmitted may be used by the jurisdiction for any purpose for which the general funds of the jurisdiction may be used.

~~[(b) Before transmitting funds under Subsection (a) of this section, the commission shall deduct two percent of the sum collected from each jurisdiction during such period and shall deposit the funds in the state treasury to the credit of a special fund to be known as the bingo enforcement fund. The fund may be used only for the administration and enforcement of this Act.]~~

(f) [(e)] The commission is authorized to retain in the suspense account of any jurisdiction a portion of the jurisdiction's share of the *fee on prizes* [tax] collected under this Act. The balance so retained in the suspense account may not exceed five percent of the amount remitted to the jurisdiction. The commission is authorized to make refunds from the suspense account of any jurisdiction for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of the jurisdiction.

(g) [(d)] When any jurisdiction *entitled to a share of the fee on prizes prohibits the conduct of bingo as provided by Sections 4-9 of this Act* [~~imposes the gross receipts tax and thereafter abolishes the tax~~], the commission may retain in the suspense account of the jurisdiction for one year five percent of the final remittance to each such jurisdiction at the time of termination of collection of the tax in the jurisdiction to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of the account. After one year has elapsed after the effective date of *the prohibition of bingo* [~~abolition of the tax~~] in the jurisdiction, the commission shall remit the balance in the account to the jurisdiction and close the account.

(h) [(e)] Interest earned on all *fees on prizes* [taxes] collected by the commission under this Act before distribution to the local jurisdiction, including interest earned from the suspense accounts retained under this section, shall be credited to the General Revenue Fund.

SECTION 18. Sections 31, 32, and 33, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 31. DETERMINATION IF NO RETURN MADE. If any licensee fails to make a required return, or if any person conducts bingo without a license, the commission shall make an estimate of the *prizes awarded at each occasion of bingo* [~~gross receipts of the licensee or person conducting bingo without a license~~] or of the gross rentals received by a licensee for the rental of premises on which bingo is conducted. The estimate shall be made for the period in respect to which the licensee or other person failed to make a return and shall be based on any information covering any period that is in the possession of the commission or may come into the possession of the commission. On the basis of this estimate, the commission shall compute and determine the amount required to be paid to the state, adding to the sum a penalty of 10 percent of the amount. One or more determinations may be made for one or more periods.

Sec. 32. JEOPARDY DETERMINATION. (a) If the commission believes that the collection of any *gross rental tax or fee on prizes* or any amount of tax or *fee on prizes* required to be remitted to the state or the amount of any determination will be jeopardized by delay, the commission shall make a determination of the tax or *fee on prizes* or amount of tax or *fee on prizes* required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

(b) If the amount specified in the determination is not paid within 20 days after service of notice thereof on the licensee against whom the determination is made, the amount becomes final at the expiration of the 20 days unless a petition for redetermination is filed within the 20 days. A delinquency penalty of 10 percent of the tax or *fee on prizes* or amount of the tax

or fee on prizes and interest at the rate of 10 percent a year shall attach to the amount of the tax or fee on prizes or the amount of the tax or fee on prizes required to be collected.

Sec. 33. APPLICATION OF TAX LAWS. Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of the *gross rentals tax* [~~taxes authorized or~~] imposed under Section 2B of this Act and the fee on prizes imposed under Section 19b of this Act except as modified by this Act. In applying the provisions [~~For purposes of the application~~] of that subtitle to the *gross rentals tax* [~~taxes authorized or~~] imposed under Section 2B of this Act and the fee on prizes imposed under Section 19b of this Act only, the 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 19: Section 35(a), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person lawfully conducting or participating in the conduct of bingo or permitting the conduct on any premises owned or leased by him or it under any license lawfully issued under this Act is not liable to prosecution or conviction for violation of any provision of the Penal Code, as amended, or any other law or ordinance to the extent that such conduct is specifically authorized by this Act. The immunity does not extend to any person knowingly conducting or participating in the conduct of bingo under any license obtained by any false pretense, [~~or by any~~] false statement, or material omission made in any application for license or otherwise or permitting the conduct on any premises owned or leased by him or it of any game of bingo conducted under any license known to him or it to have been obtained by any false pretense or statement.

SECTION 20: Section 36, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 36. OFFENSES; REVOCATION [~~FORFEITURE~~] OF LICENSE; INELIGIBILITY TO APPLY FOR LICENSE. (a) A person commits an offense and the [~~forfeits a~~] license is subject to revocation [~~issued~~] under this Act if the person:

(1) makes a false statement or material omission in an application for a license authorized to be issued under this Act;

(2) fails to maintain records that fully and truly record all transactions connected with the conducting of bingo, the leasing of premises to be used for the conduct of bingo, or the manufacture, sale, or distribution of bingo supplies, devices, or equipment;

(3) falsifies or makes any false entry in any books or records so far as they relate to the conduct of bingo, to the disposition of bingo proceeds, to the application of rent received by any authorized organization, or to the gross receipts realized from the manufacture, sale, or distribution of bingo supplies, devices, or equipment;

(4) diverts or pays any portion of the net proceeds of any game of bingo to any person except in furtherance of one or more of the lawful purposes prescribed by this Act; or

(5) violates this Act or a term of a license issued under this Act.

(b) An offense under Subsection (a)(2), (3), or (5) of this section is a Class C misdemeanor, unless it is shown on the trial of the offense that the person has been convicted previously under this section, in which event it is a Class B misdemeanor. An offense under Subsection (a)(1) or (a)(4) of this section is a Class A misdemeanor. This subsection does not apply to an offense committed under Section 39(b) or Section 40 of this Act.

(c) A person whose license is revoked [~~forfeited~~] under this section may not apply for another license under this Act until one year has elapsed from the date of revocation [~~forfeiture~~].

SECTION 21. Sections 37(a), (b), and (c), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) At any time within three years after a person is delinquent in the payment of any amount of required *gross rentals tax* or *fee on prizes* due, the commission may collect the amount as provided by this section.

(b) The commission shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due with any interest

or penalties on account of the seizure and sale. Any seizure made to collect *the gross rentals* [a] *tax or the fee on prizes* due shall be only of property of the licensee not exempt from execution under the laws of this state.

(c) Notice of the sale and the time and place of the sale shall be given to the delinquent person in writing at least 20 days before the date set for the sale as provided by this subsection. The notice shall be enclosed in an envelope addressed to the person [~~in case of a sale for limited sales tax due,~~] at his last known address or place of business [~~and in case of a sale for use taxes due, at his last known residence or place of business in this state~~]. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county at least 20 days before the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

SECTION 22. Section 38, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 38. BONDS OR SECURITIES. (a) Each licensee under this Act shall furnish to the commission a cash bond, a bond from a surety company chartered or authorized to do business in this state, certificates of deposit, certificates of savings or U.S. treasury bonds or, subject to the discretion and approval of the commission, an assignment of negotiable stocks or bonds, or such other security as the commission may deem sufficient to secure the payment of required *tax on gross rentals or fee on prizes* [taxes] under this Act. The commission shall fix the amount of the bond or security in each case, taking into consideration the amount of money that has or is expected to become due from the licensee under this Act. The amount of the bond or security required by the commission may not exceed three times the amount of the licensee's average quarterly reports.

(b) On failure to pay *the gross rentals tax or the fee on prizes* [taxes] imposed under this Act, the commission may notify both the licensee and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the commission may forfeit the bond or security or any part thereof.

(c) If the licensee ceases to conduct bingo games and relinquishes his license, the commission shall authorize the release of all bonds and security on a determination that no amounts of *gross rentals tax or fee on prizes* remain due and payable under this Act.

SECTION 23. Section 39(b), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any person conducting, promoting, or administering a game commits a felony of the third degree unless the person is conducting, promoting, or administering a game:

- (1) in accordance with a valid license issued under this Act;
- (2) within the confines of a home for purposes of amusement or recreation when:
 - (A) no player or other person furnishes anything of more than nominal value for the opportunity to participate;
 - (B) participation in the game does not exceed 15 players; and
 - (C) the prizes awarded or to be awarded are nominal;

(3) on behalf of an organization of persons 60 years of age or over, a senior citizens' association, a *senior citizens' community center program operated or funded by a governmental entity*, or the patients in a hospital or nursing home or residents of a retirement home solely for the purpose of amusement and recreation of its members, residents, or patients, when:

- (A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

- (E) the prizes awarded or to be awarded are nominal; or
- (4) on behalf of a business conducting the game for promotional or advertising purposes if:
- (A) the game is conducted by or through a newspaper or a radio or television station;
 - (B) participation in the game is open to the general public and is not limited to customers of the business;
 - (C) playing materials are furnished without charge to any person on request; and
 - (D) no player is required to furnish anything of value for the opportunity to participate.

SECTION 24. The Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) is amended by adding Section 43 to read as follows:

Sec. 43. BINGO ADVISORY COMMITTEE. (a) The commission may appoint a bingo advisory committee consisting of nine members. The committee members shall be appointed to represent a balance of interests including representatives of:

- (1) the general public;*
- (2) charities that operate bingo games; and*
- (3) commercial and charity lessors that participate in the bingo industry.*

(b) A bingo advisory committee member serves at the pleasure of the commission. A member of the committee is not entitled to receive compensation for serving as a member. A member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the committee.

(c) The bingo advisory committee may:

- (1) advise the commission on the needs and problems of the state's bingo industry;*
- (2) comment on rules involving bingo during their development and before their final adoption unless an emergency requires immediate action by the commission;*
- (3) report annually to the commission on the committee's activities; and*
- (4) perform other duties as determined by the commission.*

(d) The bingo advisory committee may meet quarterly or as requested by the commission.

(e) The commission may adopt rules to govern the operations of the bingo advisory committee.

SECTION 25. Section 112.058, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) All protest payments of taxes imposed by and collected for the state under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) that become due on or after September 1, 1993, are governed by Subchapter J, Chapter 403, Government Code.

SECTION 26. Sections 2A, 3, 4(b), 13(p), 13c(j), 16(c), 21, and 22, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), are repealed.

SECTION 27. This Act takes effect September 1, 1993, except that Section 16 of this Act takes effect October 1, 1993, but only if H.B. No. 1587, 73rd Legislature, Regular Session, 1993, or S.B. No. 550, 73rd Legislature, Regular Session, 1993, is enacted and becomes law. If neither H.B. No. 1587, 73rd Legislature, Regular Session, 1993, nor S.B. No. 550, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, this Act has no effect.

SECTION 28. (a) As soon as practicable after the commission appoints an executive director or acting executive director, but not later than April 1, 1994:

(1) all powers, duties, rights, and obligations of the Texas Alcoholic Beverage Commission relating to the administration and regulation of bingo are transferred to the Texas Lottery Commission;

(2) except as provided by Subsections (b) and (c) of this section, all assets, liabilities, personnel, equipment, data, documents, facilities, and other items of the Texas Alcoholic Beverage Commission relating to the administration and regulation of bingo are transferred to the Texas Lottery Commission; and

(3) any appropriation to the Texas Alcoholic Beverage Commission relating to the administration and regulation of bingo is transferred to the Texas Lottery Commission.

(b) The Texas Alcoholic Beverage Commission may decide whether to transfer to the Texas Lottery Commission:

(1) personnel who perform both duties that relate to bingo regulation and duties that do not relate to bingo regulation; and

(2) assets used both in bingo regulation and activities other than bingo regulation.

(c) The Texas Lottery Commission may decide whether to accept personnel from the Texas Alcoholic Beverage Commission.

(d) The officers and employees of the Texas Alcoholic Beverage Commission shall cooperate fully with the reorganization.

(e) A transfer of functions under Subsection (a) of this section shall occur on the date specified in an interagency contract between the Texas Lottery Commission and the Texas Alcoholic Beverage Commission.

(f) Notwithstanding the changes made by this Act to the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), the Texas Alcoholic Beverage Commission retains all powers and duties relating to the regulation of bingo until the effective date of the transfer under Subsection (a) of this section, and:

(1) a reference in the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) to the Texas Lottery Commission is considered to be a reference to the Texas Alcoholic Beverage Commission until that date; and

(2) a reference in the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) to the executive director of the Texas Lottery Commission is considered to be a reference to the administrator of the Texas Alcoholic Beverage Commission until that date.

SECTION 29. (a) A change in law made by this Act does not affect:

(1) the validity of any action taken by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) before the effective date of the change in law; or

(2) a civil, criminal, or administrative proceeding completed before the effective date of this Act.

(b) A change in law made by this Act does not affect the validity of a civil, criminal, or administrative proceeding, including licensing or rulemaking, in progress on the effective date of the change in law. A civil, criminal, or administrative proceeding under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) that is in progress on the effective date of a transfer of functions under Section 28 of this Act continues as if it had been initiated by the Texas Lottery Commission under the law in effect on the effective date of the transfer.

(c) All forms, rules, and procedures adopted by the Texas Alcoholic Beverage Commission for the administration and enforcement of the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) and in effect on the effective date of a transfer of functions under Section 28 of this Act remain in effect on or after that date as if adopted by the Texas Lottery Commission until the earlier of:

(1) the date the form, rule, or procedure is amended, repealed, withdrawn, or otherwise superseded by the Texas Lottery Commission; or

(2) the first anniversary of the effective date of a transfer of functions under Section 28 of this Act.

(d) Before the first anniversary of the effective date of a transfer of functions under Section 28 of this Act, the Texas Lottery Commission shall review each form, rule, and procedure adopted by the Texas Alcoholic Beverage Commission under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) and may specifically adopt any form, rule, or procedure. A form, rule, or procedure that is not specifically adopted expires as provided by Subsection (c) of this section.

(e) A license issued under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) and in effect on the effective date of a transfer of functions under Section 28 of this

Act remains in effect according to its terms as if issued by the Texas Lottery Commission until the license expires or is revoked or surrendered.

(f) The change in law made by this Act does not affect taxes imposed under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection and allocation of those taxes. The Texas Alcoholic Beverage Commission, until the transfer of functions under Section 28 of this Act, and the Texas Lottery Commission on and after the transfer, may maintain a suspense account for any county or municipality that imposed a tax under Section 3, Bingo Enabling Act, before the effective date of this Act for not more than one year after the effective date of this Act to cover tax refunds and to redeem dishonored checks and drafts deposited in connection with the taxes imposed by the county or municipality.

(g) A change in law made by this Act applies only to an offense committed on or after September 1, 1993. For the purposes of this subsection, an offense is committed before September 1, 1993, if any element of the offense occurs before that date.

(h) An offense committed before September 1, 1993, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2771 on May 11, 1993, by a non-record vote; passed by the Senate, with amendments, on May 6, 1993, by a viva-voce vote.

Approved May 25, 1993.

Effective Sept. 1, 1993, except as provided by § 27 of this Act.