




## INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

**To:** J. Winston Krause, Chairman  
Carmen Arrieta-Candelaria, Commissioner  
Peggy A. Heeg, Commissioner  
Doug Lowe, Commissioner  
Robert Rivera, Commissioner

**From:** Bob Biard, General Counsel 

**Date:** February 4, 2016

**Re:** Readoption of the Charitable Bingo Administrative Rules at 16 Texas Administrative Code (TAC) Chapter 402

---

Attached is a draft order readopting the Commission's rules at 16 TAC Chapter 402, relating to Charitable Bingo Operations Division, and concluding the review of the Chapter 402 rules. If approved, the substance of the order will be submitted to the *Texas Register* for publication.

On August 27, 2015, the Commission initiated this proceeding pursuant to Texas Government Code Section 2001.039, which requires a state agency to review its rules every four years. The review must include an assessment of whether the reasons for adopting each of the rules continue to exist. The Commission's notice of intent to review Chapter 402 was published in the September 11, 2015 issue of the *Texas Register* (40 TexReg 6166). The Commission received comments from (1) the National Association of Fundraising Ticket Manufacturers (NAFTM), (2) the Veterans of Foreign Wars – Department of Texas, (3) the Texas Charity Advocates, and (4) the Bingo Interest Group.

The draft order states that, as a result of the review, the Commission intends to amend certain rules addressing the Commission's administration of charitable bingo and governing the conduct and operation of charitable bingo; bingo equipment; the application, renewal, and amendment process for Commission-issued licenses and listing on the bingo worker registry; the record-keeping and reporting requirements related to the conduct of charitable bingo and the standards for determining the propriety of certain expenses; the payment of requisite fees, the submission of bonds or other security, and the delinquent payment of the costs for bingo equipment; and the Commission's disciplinary, inspection, and audit processes. The order also states the Commission intends to propose new rules related to the licensing and/or registration of military services members, military veterans, and military spouses, as required by Texas Occupations Code Chapter 55.

The draft order states the Commission intends to propose the amendments to rules identified as requiring amendments, and to propose the new rules, in separate rulemaking proceedings.

The comments submitted by the NAFTM representative proposed rule changes that relate to a manufacturer's submission of pull-tab tickets to the Commission for review and approval, and the sale of multiple part pull-tab tickets. The remaining comments consisted of proposed changes to thirty four (34) rules; however, no explanatory comments were included with the proposed changes. In response to the comments, the Charitable Bingo Operations Director has scheduled and will convene several stakeholder meetings between Commission staff and representatives of the charitable bingo community early in 2016 to discuss the amendments identified in the readoption order and potential additional amendments proposed by the commenters which may not be reflected in the order. Any additional proposed rule amendments based on such discussions also would be proposed in separate rulemaking proceedings.

Recommendation: Staff recommends that the Commission approve readoption of the Commission's rules at 16 TAC Chapter 402, relating to Charitable Bingo Operations Division.

## **TEXAS LOTTERY COMMISSION**

### **ORDER READOPTING 16 TAC CHAPTER 402 RULES**

The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 TAC Chapter 402 (Charitable Bingo Operations Division) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 402. As a result of this review, and as discussed below, the Commission has determined that some of the rules in Chapter 402 need to be amended and certain new rules should be adopted, actions which will be proposed in separate rulemaking proceedings. Further, the Commission notes that, in response to comments, in January 2016 the Charitable Bingo Operations Director scheduled and will convene several stakeholder meetings between Commission staff and representatives of the charitable bingo community to discuss the amendments and new rules identified herein and potential additional amendments to Chapter 402 rules proposed by commenters which may not be reflected in this readoption order. These meetings are ongoing as of the date of this readoption order. Any additional proposed rule amendments based on such discussions also would be proposed in separate rulemaking proceedings.

The Chapter 402 rules consist of seven (7) subchapters with a total of sixty-nine (69) rules. Subchapter A (Administration) consists of the following rules:

§402.100 – Definitions

§402.101 – Advisory Opinions

§402.102 – Bingo Advisory Committee

§402.103 – Training Program

## §402.104 – Delinquent Obligations

Subchapter A consists of rules addressing the Commission's administration of charitable bingo and the process for handling delinquent obligations owed to the Commission. Section 402.100 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule defines key terms used throughout the Chapter 402 rules. Section 402.101 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule provides details regarding the process for requesting and issuing bingo advisory opinions, which is a duty imposed upon the Commission under Texas Occupations Code §2001.059. Section 402.102 governs the operations of the bingo advisory committee, which may be appointed by the Commission under Texas Occupations Code §2001.057. The bingo advisory committee is not currently constituted, but should the Commission appoint a new committee, §402.102 would become necessary to govern the committee's operations. The Commission believes it more prudent to keep the rule active rather than repeal it and subsequently re-adopt it if a new committee is appointed. Therefore, the Commission believes that the reasons for initially adopting the rule continue to exist. Section 402.103 remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule implements Texas Occupations Code §2001.107, which requires the Commission to establish by rule a training program for certain individuals associated with bingo conductors. However, the Commission intends to propose an amendment to §402.103(f)(1) removing a reference to the Bingo Bulletin, which is no longer published. Finally, §402.104 remains necessary, and the reasons for initially adopting the rule continue to exist, because this rule implements Texas Government Code §2107.002, which requires all state agencies to establish procedures by rule for collecting delinquent obligations. No other substantive amendment or repeal of these rules is recommended at this time.

Subchapter B (Conduct of Bingo) consists of the following rules:

§402.200 – General Restrictions on the Conduct of Bingo

§402.201 – Prohibited Bingo Occasion

§402.202 – Transfer of Funds

§402.203 – Unit Accounting

§402.204 – Prohibited Price Fixing

§402.205 – Unit Agreements

§402.210 – House Rules

§402.211 – Other Games of Chance

§402.212 – Promotional Bingo

Subchapter B consists of rules governing the conduct and operation of charitable bingo, the creation and operation of bingo units, the transfer of funds into an organization's bingo account, the prohibition on price fixing for bingo equipment, and the restrictions on other games of chance conducted during a bingo occasion. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that charitable bingo in Texas is conducted fairly and in accordance with article III, section 47 of the Texas Constitution and the Bingo Enabling Act. However, the Commission intends to propose amendments to: (1) §402.200(b)(6), requiring bingo conductors to make certain written procedures available to players upon request; (2) §402.200(i), removing obsolete language referencing a potential exception to the prohibition on reserving bingo cards; (3) §402.203(h)(1), adding a reference to Schedule A; (4) §402.205(g)(7), clarifying that unit agreements must include the method by which charitable purpose donations are apportioned among unit members; (5) §402.205(i), clarifying that the reporting requirements encompass both instant and event pull-tab tickets; and

(6) §402.210(e), requiring that an organization's house rules be posted in a conspicuous place at the bingo premises. No other substantive amendment or repeal of these rules is recommended at this time.

Subchapter C (Bingo Games and Equipment) consists of the following rules:

§402.300 – Pull-Tab Bingo

§402.301 – Bingo Card/Paper

§402.303 – Pull-tab or Instant Bingo Dispensers

§402.321 – Card-Minding Systems--Definitions

§402.322 – Card-Minding Systems--Site System Standards

§402.323 – Card-Minding Systems--Device Standards

§402.324 – Card-Minding Systems--Approval of Card-Minding Systems

§402.325 – Card-Minding Systems--Licensed Authorized Organizations Requirements

§402.326 – Card-Minding Systems--Distributor Requirements

§402.327 – Card-Minding Systems--Security Standards

§402.328 – Card-Minding Systems--Inspections and Restrictions

Subchapter C consists of rules governing bingo equipment, including pull-tab tickets, bingo cards and paper, ticket dispensers, and card-minding systems. The rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that charitable bingo games are conducted in accordance with, and bingo equipment is created in compliance with, the Bingo Enabling Act. However, the Commission intends to propose amendments to: (1) §402.300(a)(14), requiring that bingo merchandise prizes be valued in accordance with §402.200(f); (2) §402.300(e)(4), removing language allowing pull-tab tickets to be sold during certain intermissions between bingo occasions; (3) §402.300(g), clarifying that

records must be kept in accordance with §402.511; (4) §402.301(e)(3), clarifying that records must be kept in accordance with §402.511; and (5) §402.325(k), repealing the prohibition on reserving card-minding devices for players. No other substantive amendment or repeal of these rules is recommended at this time.

Subchapter D (Licensing Requirements) consists of the following rules:

§402.400 – General Licensing Provisions

§402.401 – Temporary License

§402.402 – Registry of Bingo Workers

§402.403 – Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

§402.404 – License and Registry Fees

§402.405 – Temporary Authorization

§402.406 – Bingo Chairperson

§402.407 – Unit Manager

§402.408 – Designation of Members

§402.409 – Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment

§402.410 – Amendment of a License – General Provisions

§402.411 – License Renewal

§402.412 – Signature Requirements

§402.420 – Qualifications and Requirements for Conductor's License

§402.422 – Amendment to a Regular License to Conduct Charitable Bingo

§402.424 – Amendment of a License by Telephone or Facsimile

§402.442 – Amendment to a Commercial Lessor License

§402.450 – Request for Waiver

§402.451 – Operating Capital

§402.452 – Net Proceeds

§402.453 – Request for Operating Capital Increase

The Commission currently licenses over one thousand three hundred (1300) charitable bingo conductors, commercial lessors, manufacturers and distributors, and has approved over eleven thousand (11,000) individuals to be listed on the bingo worker registry in Texas. Subchapter D includes rules governing the application, renewal and amendment process for Commission-issued licenses and listing on the bingo worker registry. These rules are necessary for the proper administration of the Commission's charitable bingo licensing and worker registry program. Therefore, the Commission believes that the reasons for initially adopting these rules continue to exist. Subchapter D also includes rules that implement Bingo Enabling Act provisions that govern the amount of operating capital a bingo conductor may maintain, the net proceeds a bingo conductor must produce, and the process by which licensees may request a waiver of these requirements. These rules are necessary to help ensure that bingo proceeds are directed to statutorily authorized purposes. Therefore, the Commission believes that the reasons for initially adopting these rules continue to exist. However, the Commission intends to propose amendments to §402.404 removing obsolete language that references licenses issued prior to September 1, 2013. The Commission also intends to propose new rules related to the licensing and/or registration of military service members, military veterans, and military spouses. Chapter 55 of the Texas Occupations Code requires state licensing agencies to adopt such rules. No other substantive amendment or repeal of these rules is recommended at this time.

Subchapter E (Books and Records) consists of the following rules:

§402.500 – General Records Requirements



§402.501 – Charitable Use of Net Proceeds

§402.502 – Charitable Use of Net Proceeds Recordkeeping

§402.503 – Bingo Gift Certificates

§402.504 – Debit Card Transactions

§402.505 – Permissible Expense

§402.506 – Disbursement Records Requirements

§402.511 – Required Inventory Records

§402.514 – Electronic Fund Transfers

Subchapter E consists of rules governing the record-keeping and reporting requirements related to the conduct of charitable bingo and the standards for determining the propriety of certain expenses. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because the rules help ensure that bingo proceeds are only used for statutorily-authorized purposes. However, the Commission intends to propose an amendment to §402.500(c) to clarify that records covered by that rule must be provided to the Commission upon request. No other substantive amendments are recommended at this time.

Subchapter F (Payment of Taxes, Prize Fees and Bonds) consists of the following:

§402.600 – Bingo Reports and Payments

§402.601 – Interest on Delinquent Tax

§402.602 – Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest

§402.603 – Bond or Other Security

§402.604 – Delinquent Purchaser

Subchapter F consists of rules governing the payment of requisite fees, the submission of bonds or other security, and the delinquent payment of the costs for bingo equipment. Section

402.600 governs the payment of bingo-related fees and the filing of quarterly reports, which are required by statute and used by the Commission to track its licensees' bingo-related finances. This rule remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule helps ensure that licensees are remitting fees in the proper amount and that bingo proceeds are only used for statutorily-authorized purposes. Furthermore, the Commission is required by Texas Occupations Code §2001.504 to adopt rules governing the payment of fees. Section 402.601 governs the payment of interest on delinquent fees, refunds and credit, while §402.602 governs the Commission's settlement of penalties and fees due. These rules remain necessary, and the reasons for initially adopting the rules continue to exist, because they implement Texas Tax Code §§111.060 (Interest on Delinquent Tax), 111.064 (Interest on Refund or Credit), 111.101 (Settlement) and 111.103 (Settlement of Penalty and Interest Only), which are made applicable to the Commission through Texas Occupations Code §§2001.508 and 2001.512. Section 402.603 governs the submission of a bond or other security by a licensee, which is required under Texas Occupations Code §2001.514. The rule remains necessary, and the reasons for initially adopting the rule continue to exist, because the rule helps secure the payment of statutorily-authorized fees by licensees. Finally, §402.604 imposes requirements when a purchaser of bingo equipment is delinquent in its payment of the amount due for the equipment. The rule implements Texas Occupations Code §2001.218, and it remains necessary to help ensure that transactions for bingo equipment comply with that statute. Therefore, the Commission believes that the reasons for initially adopting the rule continue to exist. However, the Commission intends to propose rule amendments that recognize that commercial lessors are no longer required to pay a tax on gross rent receipts occurring on or after September 1, 2015, or

to obtain a bond to secure the payment of such taxes. No other substantive amendments are recommended at this time.

Subchapter G (Compliance and Enforcement) consists of the following rules:

§402.700 – Denials; Suspensions; Revocations; Hearings

§402.701 – Investigation of Applicants for Licenses

§402.702 – Disqualifying Convictions

§402.703 – Audit Policy

§402.705 – Inspection of Premises

§402.706 – Standard Administrative Penalty Guideline

§402.707 – Expedited Administrative Penalty Guideline

§402.708 – Dispute Resolution

§402.709 – Corrective Action

Subchapter G includes rules governing the Commission's disciplinary, inspection, and audit processes. These rules are necessary, and the reasons for initially adopting the rules continue to exist, because they help ensure that licensees and other persons abide by all applicable statutes and rules. Subchapter G also includes rules governing the conduct of criminal background checks on applicants and criminal convictions which may disqualify a license or bingo worker registry applicant. These rules are necessary, and the reasons for initially adopting the rules continue to exist, because they help implement Texas Occupations Code §2001.541, which requires the Commission to adopt rules regarding the use of criminal history record information in the licensing process. However, the Commission intends to propose amendments to §§402.706 and 402.707 to implement the Sunset Advisory Commission's recommendation, codified in Texas Occupations Code §2001.358, that the Texas Lottery Commission include in

its penalty guidelines a description of what violations could warrant license revocation or suspension.

This review and readoption has been conducted in accordance with Texas Government Code §2001.039. The Commission received comments on the proposed review, which was published in the September 11, 2015 issue of the *Texas Register* (40 TexReg 6165). Comments were submitted by representatives of the National Association of Fundraising Ticket Manufacturers (NAFTM), the Veterans of Foreign Wars – Department of Texas, the Texas Charity Advocates, and the Bingo Interest Group. The comments submitted by the NAFTM representative only propose changes to §402.300 that relate to a manufacturer's submission of pull-tab tickets to the Commission for review and approval, and the sale of multiple part pull-tab tickets. The remaining comments consist of proposed changes to thirty four (34) rules; however, no explanatory comments were included with the proposed changes. As previously noted, in response to comments the Charitable Bingo Operations Director has scheduled and will convene several stakeholder meetings between Commission staff and representatives of the charitable bingo community early in 2016 to discuss the amendments and new rules identified herein and potential additional amendments proposed by the commenters which may not be reflected in this readoption order. Representatives of each of the four organizations that provided comments to this rule review have been invited to attend one or more of those meetings. The Commission intends for the commenters' proposed changes to be discussed in depth at those meetings. A final decision regarding those proposed changes will be made after the meetings have concluded. Any additional proposed rule amendments resulting from the stakeholder meetings would be proposed in separate rulemaking proceedings.

This action concludes the Commission's review of 16 TAC Chapter 402.

This agency hereby certifies that the readoption of these rules has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

---

J. WINSTON KRAUSE, CHAIRMAN

---

CARMEN ARRIETA-CANDELARIA, COMMISSIONER

---

PEGGY A. HEEG, COMMISSIONER

---

DOUG LOWE, COMMISSIONER

---

ROBERT RIVERA, COMMISSIONER