

## INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

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

**From:** Ryan S. Mindell, Assistant General Counsel *RM*

**Date:** December 7, 2017

**Re:** Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §§402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.402 (Registry of Bingo Workers), 402.404 (License and Registry Fees), 402.405 (Temporary Authorization), 402.407 (Unit Manager), 402.410 (Amendment of a License – General Provisions), 402.411 (License Renewal), 402.413 (Military Service Members, Military Veterans, and Military Spouses), 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 Electronic Mail, Telephone or Facsimile), and 402.603 (Bond or Other Security)

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Attached are draft rules prepared for submission to the *Texas Register* to adopt the above-referenced amendments with changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5786) (also attached). The adopted version of the rule conforms language in §402.404(d)(3) regarding renewal fees to match the license language in §402.404(a)(2)(A), and corrects a rule reference in §402.411(b).

The Department of Texas, Veterans of Foreign Wars (Texas VFW), and Texas Charity Advocates provided comments at the November 8 public hearing. Texas VFW submitted additional written comments during the public comment period. These comments are set forth and addressed in the preamble to the draft of the rule amendments. No changes were made to the rule amendments based on the comments received.

The purpose of the rule amendments is to implement statutory changes required by newly-enacted HB 2578, SB 549, and SB 2065 from the Regular Session of the 85th Texas Legislature. The amendments remove all references to bingo conductor and worker fees, while revising the license application and renewal process. In addition, the amendments facilitate the HB 2578 requirement that the Commission retain a portion of the bingo prize fees otherwise allocable to counties and municipalities to fund the administration of the charitable bingo regulatory program. Further, the amendments allow commercial lessors, distributors, and manufacturers to recover up to half of their application fee if they withdraw their application before a license is issued or if their application is denied. The amendments also remove the licensing requirements for bingo unit managers while maintaining those managers' reporting and notification requirements. Last, the amendments correct typographical errors and make non-substantive conforming changes to the rules.

Recommendation: Staff recommends that the Commission adopt the above-referenced rule amendments.

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.402 (Registry of Bingo Workers), 402.404 (License and Registry Fees), 402.405 (Temporary Authorization), 402.407 (Unit Manager), 402.410 (Amendment of a License – General Provisions), 402.411 (License Renewal), 402.413 (Military Service Members, Military Veterans, and Military Spouses), 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 Electronic Mail, Telephone or Facsimile), and 402.603 (Bond or Other Security), with changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5786). The adopted version of the rule conforms language in §402.404(d)(3) regarding renewal fees to match the license language in §402.404(a)(2)(A), and corrects a rule reference in §402.411(b).

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notification requirements. Last, the amendments correct typographical errors and make non-substantive conforming changes to the rules.

A public comment hearing was held on Wednesday, November 8, 2017, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. The Department of Texas, Veterans of Foreign Wars (Texas VFW), and Texas Charity Advocates (TCA) provided comments at the hearing. The Commission also received written follow-up comments on the proposed amendments from the Texas VFW. The public comments and the Commission's responses are summarized below:

COMMENT SUMMARY: Regarding the language in §402.400, both commenters stated that a general reference to “supplemental forms” or “accompanying supplements” does not cover, going forward, new forms or revisions to existing forms that impose new requirements on a license holder.

COMMISSION RESPONSE: The proposed amendments to the language in §402.400 regarding “supplemental forms” and “accompanying supplements” is a conforming change to the rule language and is not intended to be a substantive change to any requirement or form. Previously, the rule referenced “applicable schedules,” which was changed to match current Commission terminology, and “accompanying supplements,” which was moved from the now-deleted §402.400(n) to the proposed §402.400(f). Any additional forms or revisions to forms in the future will meet all applicable legal requirements. The Commission declines to make changes to the proposed amendments in response to these comments.

COMMENT SUMMARY: Both commenters requested changes to §402.400(f)(2), which relates to a step in an optional eligibility process. The commenters requested that a specific timeline be included for the documents to be filed. And the commenters requested that

organizations should not be forced to purchase a bond until the last step of this application process.

COMMISSION RESPONSE: The optional eligibility process outlined in §402.400(f) offers an organization a different pathway to receive a license to conduct bingo, and specifically references the submission of an application without a bond or other security among the items that could be initially excluded from the submission of an application for review. Upon review of that submitted application, an organization would receive a determination of licensure eligibility. If eligible for a license, the remaining items needed for license issuance would be a bond or other security in addition to the intended playing location, days, times and starting date of the bingo occasions. Because the facts of each applicant present different issues, the rule language was drafted to give the organization and the Commission flexibility throughout this process; a specific timeline could limit organizations' ability to become eligible and then have to restart their application. The optional process may in many cases take longer than the typical application process, but already allows the organization flexibility in submitting its bond later than it would under the normal application process. Furthermore, an organization would already know whether it is eligible before being required to submit a bond, unlike with the typical application process. Section 402.400(f)(2) is, for most purposes, the last possible step in an application. The Commission declines to make changes to the proposed amendments in response to these comments.

COMMENT SUMMARY: The Texas VFW commenter asked why §402.400(f)(3) requires an organization that had previously submitted certified meeting minutes stating that the organization voted to conduct bingo at the licensed location to repeat the task.

COMMISSION RESPONSE: The optional eligibility process outlined in §402.400(f) offers an organization a different pathway to receive a license to conduct bingo. The optional process may, in many cases, take longer than the typical application process. The Commission requires updated meeting minutes, current as of the supplemental submission, to ensure that the application requirements are still met and all required information is up to date. The Commission declines to make changes to the proposed amendments in response to this comment.

COMMENT SUMMARY: The TCA commenter requested that language in §402.400(n) be changed to allow a licensed attorney to represent an applicant or licensee by filing a letter with the Commission.

COMMISSION RESPONSE: As noted in the preamble, the primary purpose of the proposed amendments is to enact statutory changes required by newly-enacted HB 2578, SB 549, and SB 2065. The requested change is outside the scope of the proposed amendments. The Commission declines to make changes to the proposed amendments in response to this comment, but will take this comment under advisement as it considers future process changes.

COMMENT SUMMARY: The Texas VFW commenter stated that a proposed sentence in §402.402(s) (stating that payment for the employment of a non-registered worker is not an authorized bingo expense) is outside the scope of the current rulemaking.

COMMISSION RESPONSE: This sentence was moved from §402.402(g) as a non-substantive conforming change as outlined in the scope of rulemaking in the preamble. In revising §402.402 to remove all references to fees, this language was moved to make the rule more clear about its applicability. There is no substantive change. The Commission declines to make changes to the proposed amendments in response to this comment.

COMMENT SUMMARY: Both commenters stated that the references to conductor license classes by gross receipts identified in §402.404(a)(2)(A) are unnecessary given the absence of any license fee for conductors. While license classes for conductors are needed for bond purposes, the gross receipts attributed to conductor license classes should be removed from §402.404. Specifically, HB 2578 repealed the license fees for conductors. The license classes in Subsection (a)(2)(A) have nothing to do with the calculation of prize fees for which Commission staff has indicated that they will use this license class information. The Commission should use internal accounting to track this information and not require the organizations to provide the information.

COMMISSION RESPONSE: As both commenters noted, the Commission has indicated that the information contained in §402.404(a)(2)(A) is necessary for calculations related to the Bingo Division's operating budget. While the license-class-related information is not directly relevant to conductors after the changes in HB 2578, the amounts that the Commission is using to determine the Bingo Division's operating budget are relevant to the cities and counties that will have their prize fee share reduced. The Commission believes it is more transparent, and will provide fair and reasonable notice to affected persons, including local jurisdictions whose prize fee allocations are affected by HB 2578, to retain these totals in the rules. In addition, as at least one commenter acknowledged, this information is still required from the conductors for bond purposes. By keeping the information where it was already located, in §402.404, the proposed amendments are more understandable and smaller in scope. The commenters' suggested changes would require larger revisions to more rules. The Commission declines to make changes to the proposed amendments in response to these comments.

The rule amendments are adopted under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and Section 13 of HB 2578 from the Regular Session of the 85th Texas Legislature, which required the Commission to adopt rules for its implementation.

The adopted amendments implement the Texas Occupations Code, Chapter 2001.

§402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. The initial submittal of an application is incomplete if the following information is not provided:

- (1) All information requested on the application form and supplemental forms;
- (2) All supplemental information requested during the pre-licensing investigation period;
- (3) The applicable license fee for a lessor, distributor, or manufacturer; and
- (4) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant on an applicable form shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable form must be legible and must include the following:

- (1) the name and address of the organization as it appears on the application;
- (2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;



(3) a statement identifying the information submitted;

(4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line or providing incomplete information may result in the denial of the license application.

(f) For an application to conduct bingo, an organization may choose to submit the application form without including a bond or other security; information regarding previously held licenses; justice precinct, city or county certification; and information on intended playing location, days, times, and starting date.

(1) All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Within a number of calendar days required by the Commission on the applicable forms, the organization must remit the required bond or other security to the Commission and inform the Commission on the applicable supplemental forms of the intended playing location, days, times, and starting date of the occasions. If the organization fails to provide the required

bond or other security as well as complete and accurate supplement forms within the required timeframe, the Commission will deny the application.

(3) An organization that has submitted the appropriate bond or other security and a complete application, including all applicable supplemental forms, must also submit updated, certified meeting minutes, current as of the submission of the applicable supplemental information, stating that the organization voted to conduct bingo at the licensed location.

(g) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

- (1) review of the Bingo Enabling Act;
- (2) review of the Charitable Bingo Administrative Rules;
- (3) licensee responsibilities;
- (4) process pertaining to the different types of license application;
- (5) bookkeeping and record keeping requirements as it involves bingo; and
- (6) a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(h) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(i) Each licensed authorized organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of licensing activity requested.

(j) A license applicant may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License application fees for withdrawn license applications will be refunded, as provided for in the Bingo Enabling Act. If the organization wants to reapply for a license, a complete new application and new license fee, if applicable, are required.

(k) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(l) Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, may request to place its regular license in administrative hold, but only at the time of license renewal, as provided in §402.411 of this Chapter.

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested.

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and

(B) a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(m) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(n) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed Authorization of Representation for Bingo Licenses form. A person is not an authorized representative of the applicant or licensee unless specifically named

on a form prescribed by the Commission as part of the application, or on the Authorization of Representation for Bingo Licenses form that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or on the Authorization of Representation for Bingo Licenses form as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

#### §402.401. Temporary License.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo liability--Includes, but is not limited to, any applicable license fee, late license renewal fee, prize fee, penalty, interest, or administrative penalty.

(2) Regular license--A license to conduct bingo that is effective for a period of one year unless revoked or suspended by the Commission. A regular license may be referred to as an annual license.

(3) Temporary license--A license to conduct bingo that is in effect for a single bingo occasion.

(b) General.

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a bingo liability, has not distributed the proceeds calculated on the quarterly report for a charitable purpose, or has a regular license in administrative hold.

(2) Duration. A temporary license is valid for no more than four consecutive hours during any day.

(3) Display. The licensed authorized organization must conspicuously display during a temporary bingo occasion at the licensed bingo premises a temporary license, and, if applicable, verification of notification as referred to in subsection (d)(3)(D) of this section.

(4) Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed six per calendar year. If over six previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than six of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Commission will automatically revoke all temporary licenses in excess of the six per year.

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder that stated the specific date and time of any bingo occasion will likewise be denied or revoked.

(5) All records that are required to be maintained under a regular license must be maintained for a temporary bingo license.

(c) The playing time of a temporary bingo occasion may not conflict with the playing time of any other license at the bingo premises on that date unless otherwise provided by law.

(d) Regular license holder.

(1) A regular license holder must apply for a temporary license at least seven calendar days prior to the bingo occasion.

(2) Quarterly reports filed by a regular license holder must include proceeds from all licensed temporary occasions held during the quarter.

(3) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license.

(A) The regular license holder must submit an application on the prescribed form that indicates the number of temporary licenses requested for the license period.

(B) The regular license holder must notify the Commission of the date and time the temporary license will be used by submitting a form prescribed by the Commission.

(C) Any temporary license issued without the specific date or time identified must be used prior to the expiration date of the regular license in effect at the time the temporary license application was filed.

(D) The Commission shall provide a verification of receipt of notification that must be posted adjacent to the applicable temporary license during the bingo occasion.

(4) In accordance with Occupations Code, §2001.108(e), the Commission may issue to a regular license holder additional temporary licenses in excess of the number of temporary licenses specified under Occupations Code, §2001.103(e) if the following conditions are met:

(A) The regular license holder submits a completed application on the form prescribed by the Commission;

(B) The date and times stated on the application are consistent with the day and times licensed to the organization that has ceased or will cease to conduct bingo as provided in Occupations Code, §2001.108; and



(C) The Commission has not acted on an amendment application filed under Occupations Code, §2001.108(a).

(5) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued.

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar days prior to the bingo occasion.

(1) If an organization has never received a temporary license or 3 years have elapsed since the organization last held a temporary bingo occasion, the organization must submit a Texas Application for Temporary Bingo Occasions for Non-Licensed Organization - Section 2.

(2) Organizations who have held a temporary license occasion in the past three years may submit Texas Application for a Temporary Bingo Occasions for Non-Licensed Organization - Section 1 to apply for a temporary license.

§402.402. Registry of Bingo Workers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Chairperson--an individual named in accordance with Texas Occupations Code §2001.002(4-a) and §2001.102(b)(6).

(2) Bookkeeper--an individual ultimately responsible for the preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.

(3) Caller--an individual who operates the bingo ball selection device and announces the balls selected.

(4) Cashier--an individual who sells and records bingo card and pull-tab sales to bingo players and/or pays winners the appropriate prize.

(5) Completed Application--A registry application or renewal form prescribed by the Commission which is legible and lists at a minimum the applicant's complete legal name, address, social security number or registry number, date of birth, race, gender and signature.

(6) Manager--an individual who oversees the day-to-day operation of the bingo premises.

(7) Operator--means an active bona fide member of a licensed authorized organization that has been designated on a form prescribed by the Commission prior to acting in the capacity as the organization's operator.

(8) Provisional Employee--an individual who is employed by a licensed authorized organization as an operator, manager, cashier, usher, caller, or salesperson while awaiting the results of a background check, whether paid or not.

(9) Salesperson--an individual who monitors bingo players, sells bingo cards and pull-tabs, verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as an usher, floor worker, or runner.

(10) Usher--an individual who monitors bingo players, sells bingo cards and pull-tabs, verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as a salesperson, floor worker or runner.

(b) Who must be listed on the Registry of Approved Bingo Workers. Any individual who carries out or performs the functions of a caller, cashier, manager, operator, usher, salesperson,

bookkeeper, or bingo chairperson as defined in subsection (a) of this section must be listed on the Registry of Approved Bingo Workers prior to being involved in the conduct of bingo.

(c) Each individual must submit a completed Texas Application for Registry of Approved Bingo Workers as prescribed by the Commission to remain on the Registry of Approved Bingo Workers.

(d) The registrant will be added to the registry as soon as possible after the Commission has determined that the individual is eligible to be involved in the conduct of bingo or act as an operator.

(e) For purposes of the Registry of Approved Bingo Workers, each operator, bookkeeper, and bingo chairperson must be designated on the licensed authorized organization's license to conduct bingo application.

(f) A licensed authorized organization must submit the name of a registered operator, bookkeeper, or bingo chairperson on a form prescribed by the Commission prior to the individual's acting in that capacity.

(g) A registered worker who fails to timely submit the prescribed form to renew listing on the registry may not be involved in the conduct of bingo until the individual is again added to the registry. It is the responsibility of the licensed authorized organization to review the registry to confirm that the individual's registration is current.

(h) How to be listed on the Registry of Approved Bingo Workers. For an individual to be listed on the Registry of Approved Bingo Workers, an individual must:

(1) submit a completed Texas Application for Registry of Approved Bingo Workers form as prescribed by the Commission;

(2) submit a verifiable FBI or DPS fingerprint card if at the time of registration:

(A) the individual is residing outside of Texas; or

(B) the individual maintains a driver's license or registration in another state; and

(3) be determined by the Commission to not be ineligible under Texas Occupations Code, §2001.105(a)(6) or the Commission's Rules.

(i) Incomplete Applications. The Commission will notify the applicant at the address provided if the registry application or renewal form submitted is not complete and will identify what is missing. The original application will be returned to the applicant for correction and resubmission. It is the responsibility of the registry applicant to resubmit a completed application before it may be processed. Failure to submit an FBI or DPS fingerprint card, if required, is grounds for denial or removal of the registration.

(j) An individual listed on the registry must notify the Commission of any changes to information contained on the Texas Application for Registry of Approved Bingo Workers on file with the Commission within 30 days of the change in information. Such notification shall be in writing or other approved electronic means.

(k) Identification Card for Approved Bingo Worker.

(1) The Commission will issue an identification card indicating that the individual is listed on the registry. A registered worker and operator must wear his/her identification card while on duty.

(2) The identification card worn by the registered worker or operator while on duty must be visible.

(3) The identification card shall list the individual's name, unique registration number and registry expiration date as issued by the Commission. An individual may obtain the unique registration number and registry expiration date from the Registry of Approved Bingo Workers

on the Commission's website or by requesting the registration number and registry expiration date from the Commission.

(4) An identification card is not transferable and may be worn only by the individual identified on the card.

(5) Upon request by a Commission employee, an individual described in subsection (a) of this section shall present personal photo identification in order to verify the identification card is that individual's card.

(l) How to Obtain Additional Approved Identification Cards.

(1) A completed identification card may be obtained from the Commission by submitting the required form.

(2) An individual who has been approved to work in charitable bingo may complete an identification card form provided by the Commission for use while on duty. Blank identification card forms may be obtained from the Commission. The individual requesting the identification card form(s) must submit any required fee and the required form for the blank identification card form.

(3) The identification card prepared by the individual may only be on a prescribed Commission card form and must be legible and include the individual's name, unique registration number, and registry expiration date.

(m) A licensed authorized organization which is reporting conduct where there is a substantial basis for believing that the conduct would constitute grounds for removal or refusal to list on the registry shall make the report in writing to: Bingo Registry, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

(n) The provisions of the Texas Occupations Code §2001.313, related to the registry of bingo workers, do not apply to an authorized organization that does not have a regular license to conduct bingo who receives a temporary license to conduct bingo.

(o) If the Commission proposes to refuse to add or proposes to remove the individual from the Registry of Approved Bingo Workers consistent with Texas Occupations Code §2001.313, the Commission will give notice of the proposed action as provided by Government Code, Chapter 2001.

(p) An individual receiving notice that the Commission intends to refuse to add to or intends to remove the individual from the Registry of Approved Bingo Workers may request a hearing. Failure to submit a written request for a hearing within 30 calendar days of the date of the notice will result in the denial of the application or removal of the registered worker from the registry.

(q) An individual who has been denied or removed from the registry because of a conviction for an offense listed under Occupations Code §2001.105(b) will not be eligible to reapply to be listed. An individual who has been denied or removed from the registry because of a disqualifying criminal conviction not listed under Occupations Code §2001.105(b) may reapply to be listed no earlier than five years after the commission of the offense, or as otherwise allowed under the Commission's Rules.

(r) A provisional employee must:

(1) indicate the playing location(s) where the individual is provisionally employed on the Texas Application for Registry of Approved Bingo Workers form submitted to the Commission.

(2) immediately stop working:

(A) after 14 days if the individual is not listed on the registry and is a resident of this state.

(B) after 45 days if the individual is not listed on the registry, not a resident of this state, and submitted a fingerprint card for a background investigation. If the fingerprint cards are returned by the law enforcement agency as unclassifiable, the Commission will notify the individual, and the individual may continue to be provisionally employed by submitting a written request and new fingerprint cards within 14 days of the notification.

(C) if found to be ineligible on the basis of the background investigation.

(3) wear an identification card while on duty with the registry applicant's name, "Provisional Employment" as the unique registration number, and the submission date of the registry application as the expiration date.

(s) A licensed authorized organization who employs a provisional employee must maintain a copy of the registry applicant's completed Texas Application for Registry of Approved Bingo Workers form submitted to the Commission until the individual is listed on the registry or the licensed authorized organization is notified that the individual is not eligible to be listed. Payment for the employment of a provisional employee as outlined in subsection (a)(8) of this section is an authorized bingo expense; however, payment for non-registered workers is not an authorized bingo expense.

#### §402.404. License Classes and Fees.

(a) Definitions.

(1) License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(2) Regular License Classes and Applicable Fee Amount:

(A) There is no annual fee for a license to conduct bingo. The license-class-related amount used solely by the Commission to estimate the pro rata local share of prize fees related to licenses to conduct bingo shall be as follows:

- (i) Class A (annual gross receipts of \$25,000 or less) - \$132;
- (ii) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;
- (iii) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;
- (iv) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;
- (v) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;
- (vi) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;
- (vii) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;
- (viii) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;
- (ix) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;
- (x) Class J (annual gross receipts of more than \$400,000) - \$3,300.

(B) The annual fee for a commercial lessor license shall be as follows:



(i) Class A (annual gross rentals from licensed organizations of not more than \$12,000) - \$132;

(ii) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000) - \$264;

(iii) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000) - \$396;

(iv) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000) - \$528;

(v) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000) - \$792;

(vi) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000) - \$1,188;

(vii) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000) - \$1,584;

(viii) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000) - \$1,980;

(ix) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000) - \$2,640;

(x) Class J (annual gross rentals from licensed organizations of more than \$90,000) - \$3,300.

(C) Manufacturer's License. The annual fee for a manufacturer's license shall be \$3,000.

(D) Distributor's License. The annual fee for a distributor's license shall be \$1,000.

(b) Original License Application.

(1) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(2) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(c) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

- (1) the number of organizations conducting bingo at a licensed location; and
- (2) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) Upon written request by an organization to renew its license to lease bingo premises that is in or going in administrative hold, the organization shall pay a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, in lieu of the recalculated fee amount from the preceding license period. There is no renewal license fee for an organization renewing its license to conduct bingo that is in or going in administrative hold, but the license-class-related amount used solely by the Commission to estimate the pro rata local share of prize fees related to a license to conduct bingo for such an organization is a Class A fee amount.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

- (A) playing location; or
- (B) rental amount per occasion.

(5) If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require the commercial lessor to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises, if the commercial lessor amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments. An applicant for a commercial lessor license that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(2).

(f) Regular License Class Recalculation.

(1) For the purpose of determining the license class recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license class recalculation for a two year license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license classes and their associated fees. The annual gross rental income shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license class apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter.

(4) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average the quarterly gross receipts or gross rental income for the quarter(s) reported to determine the organization's license class.

(5) License no longer exists.

(A) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(B) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license class for the prior year) is used to recalculate the final license class, and if appropriate, any fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license class recalculation.

(6) The Commission may recalculate license classes for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(7) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license class for up to four immediately preceding license periods.

(g) Overpayment of License Fee.

(1) An overpayment of a commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits

more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

(h) Refunds.

(1) An applicant or licensee may request a refund of the fee for an initial or renewal commercial lessor's license, initial or renewal distributor's license, or initial or renewal manufacturer's license if they request withdrawal of the application before the license is issued. Upon such a request, the Commission will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of receiving the request.

(2) If the Commission denies an initial or renewal commercial lessor license application, initial or renewal distributor's license application, or initial or renewal manufacturer's license application, it will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of denying the application.

(3) A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(4) Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to calculate the regular license class.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

#### §402.405. Temporary Authorization.

(a) A temporary authorization shall be issued only to a person who is not licensed by the Commission but who has filed a complete application for an original license to conduct a charitable bingo activity.

(b) Upon the applicant's request, the Commission will issue a temporary authorization for the activity requested on the license application by the 31st calendar day after the Commission's receipt of an application that is complete in accordance with §402.400(a) of this chapter if the following are in compliance with the Act and the Rules.

(1) For all licenses: eligibility of all persons listed on the application requiring criminal background investigations.

(2) For a commercial lessor license: eligibility of applicant as provided by Texas Occupations Code, §2001.152.

(3) If an applicant asserts in writing that its application is complete, the Commission will grant or deny the application, or make a determination on temporary authorization.

(c) A temporary authorization to conduct a bingo-related activity may only be issued to a person who will conduct a bingo-related activity at the same location for which the person has a pending original application to conduct a bingo-related activity.



(d) A temporary authorization shall be issued for a stated period of time not to exceed 60 days. A temporary authorization may be extended upon written request by the person to whom the temporary authorization was issued. Such request must be filed with the Commission at least seven working days prior to the time the temporary authorization expires. Extensions shall be for a period of time not to exceed 60 days. No more than two extensions may be issued.

(e) A request for an extension shall include:

- (1) the complete name of the organization requesting the extension;
- (2) the Texas taxpayer identification number of the organization requesting the extension;
- (3) a complete explanation of the basis for the request; and
- (4) the specific reason(s) supporting the need for an extension.

(f) An organization that is not in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules will not be granted an extension unless the organization becomes compliant during the period of the original temporary authorization.

(g) An organization conducting bingo under a temporary authorization that desires to obtain a temporary license shall be subject to the same requirements in §402.401(e) of this chapter regarding an organization not holding a regular license to conduct bingo.

(h) A temporary authorization is not a license.

(i) A temporary authorization may not be amended.

(j) A regular license that has been issued to an applicant shall expire one year from the date of the first issuance of any temporary authorization under this section.

(k) For the purposes of Texas Occupations Code, §2001.304(a), an application for an activity is considered issued or denied on the date the Commission issues a license or notice of denial to the applicant.

§402.407. Unit Manager.

Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) the Commission receives the unit accounting agreement executed by all members of the unit with the name of the unit manager designated therein; and

(B) the individual provides information to the Commission relating to the location where the unit manager services will be performed and where the records will be maintained.

(2) A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent notification to the Commission. The unit manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

§402.410. Amendment of a License – General Provisions.

(a) The Commission will not approve a license amendment application with an effective date that is not within the licensed authorized organization's or commercial lessor's current license period.

(b) A licensee may amend a license renewal application prior to its approval.

(c) The term "effective date", when used in this section, means the first day that the amended changes are to begin.

(d) A licensee may not begin activities under the amended license until the following have occurred:

(1) the effective date; and

(2) licensee's receipt and display at the playing location of official written notification or the amended license authorizing the change.

(e) The fee to amend any commercial lessor, manufacturer, or distributor license issued under the Bingo Enabling Act shall be \$10. The fee to amend a license to conduct bingo is \$0.

(f) A licensee may request a refund of any license amendment fee paid if the licensee requests withdrawal of the amendment application before an amended license is issued. Upon such a request, the Commission will refund half of any fee paid within 30 days of receiving the request. If the Commission denies an amendment application, it will refund half of any fee paid within 30 days of that denial.

#### §402.411. License Renewal.

(a) Any license issued under the Bingo Enabling Act expires one calendar year or two calendar years from the first date of the license period, as specified on the license.

(b) In order to renew a license issued under the Bingo Enabling Act, a licensee must timely file an application for renewal with the Commission. The renewal application must be on a form prescribed by the Commission. The Commission will not approve a renewal application until the application is complete and the licensee submits the requisite fee pursuant to §402.404 of this title (relating to License Classes and Fees). A licensee is solely responsible for the timely filing of an application for renewal of its regular license.

(c) The Commission may notify licensees regarding the expiration of their license(s) and the potential for renewal. Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance for untimely filing of a renewal application.

(d) To be timely filed:

(1) the renewal application and payment, if applicable, of the estimated license fee must be received by the Commission no later than the license expiration date; or

(2) the renewal application's envelope postmarked date must clearly show a date that is no later than the license expiration date, unless the expiration date is a Saturday, Sunday, or legal holiday, in which event the application is due the next day which is not a Saturday, Sunday, or legal holiday; or

(3) an application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document if the document date is less than seven days earlier than the date of receipt.

(e) Notwithstanding subsection (b) of this section, if a renewal application is not timely filed, a licensee may renew their license by filing a complete application for renewal with the Commission and, if applicable, submitting the requisite license fee and late license renewal fee. The late license renewal fee is based on the estimated license fee for the renewal period. Penalty amounts are calculated as follows:

Figure: 16 TAC §402.411(e)

Number of Days Late	Percentage of Estimated License Fee
1-14	10%
15-28	20%
29-42	30%
43-56	40%
57-60	50%

(f) Any required late license renewal fee is due within 14 calendar days of the date of the written notification by the Commission of the amount due.

(g) The Commission will not issue a temporary license to a licensed authorized organization that has not filed its renewal application.

(h) A late license renewal fee is not refundable.

(i) License renewal applications received more than 60 days after the license expiration date will be returned unprocessed by the Commission to the sender.

(j) To be complete, an application for renewal must contain all information that is required to be provided in or with the initial license application, as well as any other information required by the Commission.

(1) All information submitted to the Commission must be legible, correct, and complete.

(2) If any information previously submitted to the Commission with the licensee's initial license application or a previous renewal application has not changed since the information was last submitted to the Commission, the renewal applicant need not provide that information again. The applicant must certify on the renewal application that no changes have been made to the specific information since it was last submitted to the Commission.

(k) Unless otherwise provided by law or rule, the general licensing provisions in §402.400 of this title (relating to General Licensing Provisions) shall govern the license renewal process, including the submission and review of the renewal application, as if the renewal application was an initial license application.

(l) Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 60 days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

§402.413. Military Service Members, Military Veterans, and Military Spouses.

(a) The following terms used in this section are defined in §55.001 of the Occupations Code as follows:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) As soon as practicable after a military service member, military veteran, or military spouse applies in his or her individual capacity for a commercial lessor license, distributor license, manufacturer license, or listing on the bingo worker registry, the Commission will process the application and, if warranted, issue the license or list the applicant on the bingo worker registry. A military service member or military veteran must provide the Commission with definitive proof of his or her current or prior military service. A military spouse must provide the Commission with:

(1) definitive proof of his or her spouse's current military service; and

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member.

(c) The Commission will waive the license fee for a military service member or military veteran that applies in his or her individual capacity for a commercial lessor license, distributor license, or manufacturer license. The applicant must provide the Commission with definitive proof of the applicant's current or prior military service.

(d) The Commission will waive the license fee for a military spouse that applies in his or her individual capacity for a commercial lessor license, distributor license, or manufacturer license, provided that the applicant holds a current license issued by another state or jurisdiction that is substantially equivalent to the license for which the applicant is applying. The applicant must provide the Commission with:

(1) definitive proof of his or her spouse's current military service;

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member; and

(3) a photocopy of his or her current out-of-state license that is substantially equivalent to the license for which the applicant is applying.

(e) An individual licensed in his or her individual capacity as a commercial lessor, distributor, or manufacturer is exempt from the late license renewal fee provided for in §402.411(e) of this chapter if the individual can demonstrate, to the satisfaction of the Commission, that the individual failed to renew his or her license in a timely manner because the individual was serving as a military service member.

§402.420. Qualifications and Requirements for Conductor's License.

Figure: 16 TAC §402.420

<b>Religious Society:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be organized primarily for religious purposes.	A signed and dated copy of the most recent version of all of the organization's organizing instrument(s);  Or  A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information.

	The name of the applicant organization must match the name of the organization on the documents submitted.
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years prior to the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was continuously engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. a letter from the diocese,</li> <li>2. notices of church services, and/or church bulletins,</li> <li>3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s), and</li> <li>4. records of marriages performed, or records of funerals performed.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current</p>



convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<b>Non-Profit Medical Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Main activities must be in support of medical research or treatment programs.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three	<p>Copies of meeting minutes recording officer elections for the past three years showing the date of each meeting and signature of an officer;</p> <p>Or</p> <p>A dated list of officers and positions held for each year of the past three years.</p> <p>A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the</p>

years.	<p>organization did not fill.</p> <p>Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.</p>
Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.	<p>Verification by Parent for Charitable Organization Conductor;</p> <p>And</p> <p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization or a letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years prior to the application date or establish the date the organization was founded.</p>
Must hold a valid 501(c) exemption through the Internal Revenue Service.	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p>
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Acceptable documentation may include:</p> <ol style="list-style-type: none"> <li>1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease;</li> <li>2. canceled checks for the purchase of medical equipment or to provide medical care for the needy;</li> <li>3. letters of appreciation from individuals or organizations receiving benefits for treatment;</li> </ol>

	<p>4. IRS Form 990; and</p> <p>5. newspaper articles.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
May appoint only the organization's members to serve as operators.	A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS) The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Volunteer Fire Department:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Organized	Proof of membership in a professional fire-fighting organization;

primarily to provide fire-fighting services.	<p>Or</p> <p>Copy of a publication that lists the organization and its phone number to call in case of fire;</p> <p>Or</p> <p>A letter from a local government agency recognizing the organization as a volunteer fire department;</p> <p>Or</p> <p>A copy of all organizing instrument(s) which list this purpose for the organization;</p> <p>Or</p> <p>A dated newspaper article which details the organization's activities.</p> <p>The name of the applicant organization must match the name of the applicant on the documents submitted.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
Must operate fire-fighting equipment.	<p>Pictures of fire equipment reflecting the name of the volunteer fire department;</p> <p>Or</p> <p>Copies of canceled checks or invoices for fire-fighting equipment.</p>
May not pay members other than nominal compensation.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the <u>IRS</u>.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>If not required to file Form 990, a copy of a volunteer fire fighter application;</p>

	<p>Or</p> <p>Copy of an organizing instrument that describes compensation of members.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
May appoint only the organization's members to serve as operators.	<p>Current membership list with all officers and directors noted.</p> <p>Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.</p>
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission</p>

	will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Veteran Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an unincorporated association or corporation.	<p>A signed copy of the organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must hold a valid 501(c) exemption through the Internal Revenue Service.	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p> <p>Verification by Parent for Charitable Organization Conductor.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas Address, and either be dated three years before the application date or establish the date the organization as founded.</p>
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p>
Members must be veterans or dependents of veterans of the United States armed forces.	Verification by Parent for Charitable Organization Conductor.
Must be	The Commission will review the list of chartered veteran organizations

chartered by the United States Congress.	maintained by the United States Department of Veteran Affairs. Its website link is: <a href="http://www1.va.gov/vso/index.cfm?template=view">http://www1.va.gov/vso/index.cfm?template=view</a> .
Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.	<p>A signed and dated copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. activity reports filed with the state and/or national organization,</li> <li>2. monetary donations to Veterans Administration (VA) hospitals,</li> <li>3. letters of appreciation from veterans and/or organizations receiving benefits,</li> <li>4. support of and/or contributions to veterans' funerals and/or their families,</li> <li>5. visits to veteran's hospitals,</li> <li>6. newspaper articles, and</li> <li>7. Form 990.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;

officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Fraternal Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an Unincorporated Association or Corporation.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must be organized to perform and engage in charitable work.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must hold a valid 501(c) exemption through the Internal Revenue Service.	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant;</p> <p>Or</p> <p>Verification by Parent for Charitable Organization Conductor if affiliated with a state or national organization.</p>
May not	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization



distribute any income to members, officers, or governing body except as reasonable compensation.	<p>is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency. The document submitted to confirm the requirement must reflect organization's name, Texas address, and be either dated prior to the three year period or establish the date the organization was founded.</p>
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized purposes for the past three years.	<p>Organizing instrument(s) describing the organization's purposes.</p> <p>Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters related to furthering the organization's purpose.</p> <p>Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year).</p> <p>The meeting minutes must be dated and signed by an officer of the organization.</p>
May not authorize or support a public office candidate.	Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. canceled checks,</li> <li>2. newspaper articles,</li> <li>3. brochures,</li> <li>4. receipts,</li> <li>5. meeting minutes, and</li> </ol>

date of application.	<p>6. IRS Form 990.</p> <p>All documents must be dated and indicate the organization's name.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Volunteer Emergency Medical Services Provider:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must have been organized in Texas for at least	A copy of a listing in a publication such as a national roster or newspaper article naming the organization;

three years.	<p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation, that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p>

Class C misdemeanor.	Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;</p> <p>And</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>

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

(a) A licensed authorized organization must file a form prescribed by the Commission to amend its licensed:

- (1) playing days;
- (2) playing times;
- (3) playing location;
- (4) bingo chairperson;
- (5) organization name; or
- (6) primary business office.

(b) Playing days or playing times.

(1) An organization amending its playing day(s) or playing time(s) must specify on the form each playing occasion day and time that the organization intends to conduct bingo at the location.

(2) The playing day(s) or time(s) specified on the form may not:

(A) conflict with the playing day(s) or time(s) of any other application or license issued for that location;

(B) exceed the maximum number of bingo occasions per day allowed under Texas Occupations Code, §2001.419(c) and (d); or

(C) exceed three occasions during a calendar week or four hours per occasion.

(c) Playing location.

(1) An organization amending its playing location must return:

(A) its current bingo license if available, or a certified statement signed by the bingo chairperson indicating that the license is not available, unless the license is currently in administrative hold status or its renewal application is pending; and

(B) a copy of the meeting minutes recording that the organization voted to move the bingo playing location and indicating the exact playing location address and name of the location, if applicable.

(2) A licensee shall display a copy of its license at the current playing location if the license was surrendered upon application for an amendment.

(d) Organization name. An organization amending its organization name must submit a copy of the following:

(1) all amended organizing instruments reflecting the name change;

(2) written notice sent to the Internal Revenue Service updating the organization's record if the organization is required to maintain a 501(c) exemption;

(3) meeting minutes recording that the organization voted to change its name; and

(4) letter approving the name change from the parent organization, if applicable.

(e) Primary business office location.

(1) An organization may not relocate its primary business office to a different county solely for the purpose of relocating its bingo playing location. If the new location is not adjacent to the current county of its primary business office, the organization must have at least 20 percent of its members' residences located in the county to which the organization is moving.

(2) An organization changing its primary business office location must submit a copy of the following:

(A) meeting minutes recording that the licensed authorized organization voted to move its primary business office to the proposed location and the reason for the move;

(B) if moving to a non-adjacent county, the licensed authorized organization's membership list showing names and county of residence with at least 20 percent of the members' residences located in the non-adjacent county to which the organization is moving; and

(C) letter approving the organization's primary business office relocation to another county from the parent organization, if applicable.

(f) Meeting minutes submitted in accordance with subsections (c)(1)(B), (d)(3), and (e)(2)(A) of this section must be signed and certified as true and correct by an officer of the organization.

§402.424. Amendment of a License by Electronic Mail, Telephone or Facsimile.

(a) The term "effective date," when used in this section, shall mean the first day that the changes to the day(s) or time(s) bingo is conducted by the organization are to begin.

(b) A licensed authorized organization may change the day(s) or time(s) it conducts bingo by electronic mail, telephone or facsimile. The request should be received no later than noon the business day before the requested effective date of the amended license.

(1) To change by telephone the day(s) or time(s) the organization conducts bingo, an authorized requestor must speak directly to a License and Permit Specialist in the Licensing Services Department of the Charitable Bingo Operations Division, who will verify the caller's authority to request an amendment.

(2) To change by facsimile the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the facsimile number provided on the prescribed application form.

(3) To change by electronic mail the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the bingo service electronic mail address provided on the prescribed application form.

#### §402.603. Bond or Other Security.

##### (a) Bond or Other Security Required.

(1) An applicant for a regular license to conduct charitable bingo must submit security consistent with the provisions of this section. A licensed authorized organization must maintain the security until the organization ceases to conduct bingo and the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the security amount for a regular license to conduct charitable bingo is based on the license class. The security amount is:

- (i) Class A - \$125.00.
- (ii) Class B - \$325.00.
- (iii) Class C - \$600.00.
- (iv) Class D - \$825.00.
- (v) Class E - \$1,225.00.

- (vi) Class F - \$1,800.00.
- (vii) Class G - \$2,125.00.
- (viii) Class H - \$2,675.00.
- (ix) Class I - \$3,275.00.
- (x) Class J - \$7,000.00

(B) If at any time a licensed authorized organization fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, then the organization's security amount may be calculated at three times its highest quarterly prize fee for the four most recent quarters or for the highest quarter filed if less than four.

(C) If a licensed authorized organization has fully paid all prize fees and associated penalties, if any, prior to a final jeopardy determination for eight (8) consecutive quarters, the amount of the requisite security will be reduced to \$100.00. If at any time an organization paying the reduced security amount fails to fully pay its requisite prize fees and any associated penalties and interest by the due date and a jeopardy determination becomes final, then the Commission may calculate the organization's security amount in accordance with §402.603(a)(1)(A) or (B) of this chapter.

(2) An applicant for a manufacturer's license must submit a cash bond or bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state. A licensed manufacturer must maintain the bond until the license is relinquished or revoked.

(3) Accounting Units.

(A) An accounting unit may submit and maintain one bond or other security to cover each of the unit's member organizations. Except as otherwise provided in this section, the



amount of the security shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter. If a unit member organization subsequently withdraws or is removed from the unit, that organization is responsible for obtaining and maintaining the requisite security.

(B) If at any time an accounting unit fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, the unit's security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the organizations that were in the unit at the time of the prize fee delinquency. If a unit member organization withdraws or is removed from such a unit, that organization's security amount shall be equivalent to its share of the unit's security amount, and the unit's security amount may be reduced by an amount equivalent to the exiting organization's share. If another organization subsequently joins such a unit, the unit's security amount will increase by the amount of the newly-joined organization's security amount.

(b) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees:

(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.

(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.

(3) Letters of credit from financial institutions.

(4) United States Treasury bonds, readily convertible to cash.

(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.

(c) Forfeiture.

(1) If a licensed authorized organization or accounting unit pays less than the total amount of prize fee due, the Commission shall notify the licensed authorized organization or accounting unit of the delinquency via the "Texas Notice of Fee Due and Jeopardy Determination" for the quarter in which the liability exists.

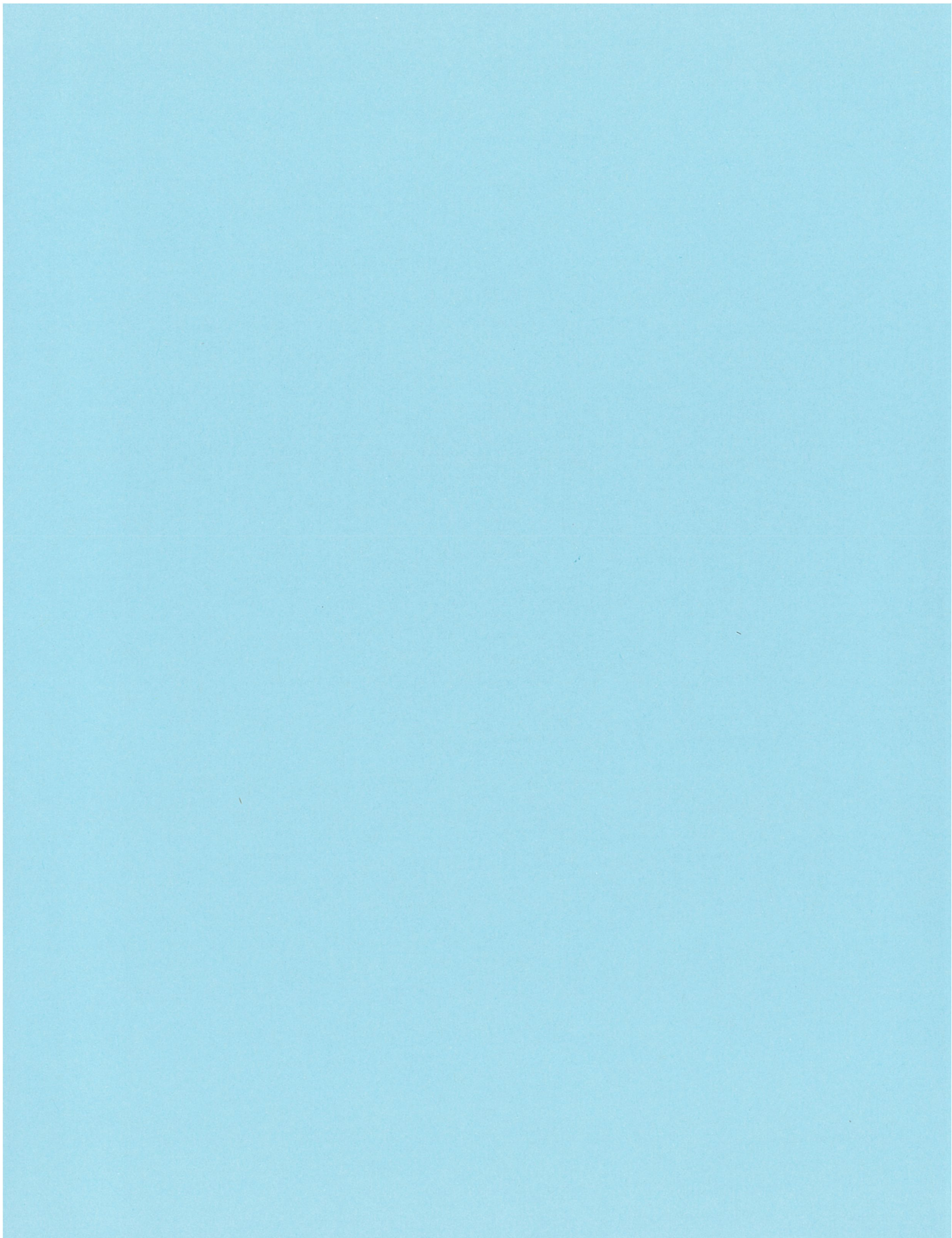
(2) If the licensed authorized organization or accounting unit does not make the required payment by the date stated in the notice provided under subsection (c)(1), the Commission will demand the bond or other security or any part of the bond or other security from the holder of the bond or other security necessary to pay the amount of prize fee due.

(3) The Commission will notify the licensed authorized organization or accounting unit and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.

(d) Release of Bond or Other Security. The Commission will release a bond or other security upon the relinquishment or revocation of the license for which the security was furnished, provided that the Commission determines that no prize fee, penalty, or interest remains due and payable. The Commission will notify the former licensee in writing that the security has been released. If an accounting unit maintains one bond or other security for its

member organizations, and one or more of the unit member's licenses are relinquished or revoked, then the Commission will notify the accounting unit in writing that its security amount may be reduced to an amount sufficient to cover only current unit members.

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Play prize pool accounts or prize reserve accounts shall be used to fund WTA Prizes.

(4) Winner Take All® Expected Prize Payout Percentage and Winning Numbers Match Determination.

(A) Pari-Mutuel Determination. The WTA Prize payout shall be determined on a pari-mutuel basis. Except as otherwise mandated by jurisdiction statute or judicial requirements, or provided for in the MUSL Powerball game rules, the WTA Prize awarded will consist of 100% of the allocated prize pool and shall be paid as a single lump sum payment to the WTA Play(s) matching the most Winning Numbers in a WTA Drawing as indicated below:

(i) The WTA Prize will be paid to the holder(s) of the winning WTA Play(s) that matches all five (5) of the first set, plus one (1) of the second set selected in the WTA Drawing.

(ii) If the WTA Prize has not been awarded under clause (i) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches all five (5) of the first set and none (0) of the second set.

(iii) If the WTA Prize has not been awarded under clause (i) or (ii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any four (4) of the first set plus one (1) of the second set.

(iv) If the WTA Prize has not been awarded under clauses (i) through (iii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any four (4) of the first set and none (0) of the second set.

(v) If the WTA Prize has not been awarded under clauses (i) through (iv) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any three (3) of the first set plus one (1) of the second set.

(vi) If the WTA Prize has not been awarded under clauses (i) through (v) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any three (3) of the first set and none (0) of the second set.

(vii) If the WTA Prize has not been awarded under clauses (i) through (vi) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any two (2) of the first set plus one (1) of the second set.

(viii) If the WTA Prize has not been awarded under clauses (i) through (vii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any one (1) of the first set plus one (1) of the second set.

(ix) If the WTA Prize has not been awarded under clauses (i) through (viii) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches none (0) of the first set plus one (1) of the second set.

(x) If the WTA Prize has not been awarded under clauses (i) through (ix) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any two (2) of the first set and none (0) of the second set.

(xi) If the WTA Prize has not been awarded under clauses (i) through (x) of this subparagraph, then the WTA Prize will be awarded to the WTA Play(s) that matches any one (1) of the first set and none (0) of the second set.

(xii) If the WTA Prize has not been awarded under clauses (i) through (xi) of this subparagraph, then the WTAPP shall be carried forward to the subsequent Drawing.

(B) WTA Prize Pool Allocation. The WTAPP money allocated to the WTA Prize shall be divided on a pari-mutuel basis by the number of winning WTA Plays. The WTA Prize shall not be multiplied by the Power Play multiplier.

(C) WTA Prize Pool Carried Forward. The WTAPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the WTA Prize(s) awarded in the current draw (See clause (xi) of subparagraph (4)(A) of subsection (1) and subparagraph (D) of paragraph (6) of subsection (1) of this section).

(5) Winner Take All Probabilities. The following table sets forth the probability of a WTA Play matching the Winning Numbers from the WTA Drawing:  
Figure: 16 TAC 401.317(1)(5)

(6) Winner Take All Prize Payment. The WTA Prize shall be paid with a single lump sum payment and will be divided on a pari-mutuel basis among all winning WTA Plays.

(A) WTA Prize payments (whether described as "cash" payment prizes or otherwise) shall be paid through the Selling Lottery(ies) that sold the winning WTA Play(s) and at the discretion of the Selling Lottery(ies) that sold the winning WTA Play(s) may be paid by cash, check, warrant or electronic transfer.

(B) A Selling Lottery may begin making WTA Prize payment(s) after receiving confirmation from MUSL of the WTA prize winning Play(s) and WTA Prize amount(s) to be paid.

(C) A lottery may elect to make WTA Prize payment(s) from its own funds after validation, without having received a transfer from MUSL, with prior notice to MUSL.

(D) WTA Prize Rounded; Breakage Carried Forward. The WTA Prize is a single prize that will be divided on a pari-mutuel basis among all holders of winning WTA Plays, is therefore, a pari-mutuel prize and may be rounded down so that amounts may be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(E) WTA Prize Claim Period. WTA Prize claims shall be submitted within one hundred eighty (180) days after the Drawing date.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2017.

TRD-201704022

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 19, 2017

For further information, please call: (512) 344-5012

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## CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.402 (Registry of Bingo Workers), 402.404 (License and Registry Fees), 402.405 (Temporary Authorization), 402.407 (Unit Manager), 402.410 (Amendment of a License- General Provisions), 402.411 (License Renewal),

402.413 (Military Service Members, Military Veterans, and Military Spouses), 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 Electronic Mail, Telephone or Facsimile), and 402.603 (Bond or Other Security).

The purpose of the proposed amendments is to implement statutory changes required by newly-enacted HB 2578, SB 549, and SB 2065 from the Regular Session of the 85th Texas Legislature. The proposed amendments remove all references to bingo conductor and worker fees, while revising the license application and renewal process. In addition, the proposed amendments facilitate the HB 2578 requirement that the Commission retain a portion of the bingo prize fees otherwise allocable to counties and municipalities to fund the administration of the charitable bingo regulatory program. Further, the proposed amendments allow commercial lessors, distributors, and manufacturers to recover up to half of their application fee if they withdraw their application before a license is issued or if their application is denied. The proposed amendments also remove the licensing requirements for bingo unit managers while maintaining those managers' reporting and notification requirements. Last, the proposed amendments correct typographical errors and make non-substantive conforming changes to the rules.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments that is not attributable to the newly-enacted legislation. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Alfonso D. Royal III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit is reducing the fiscal and administrative burden on bingo conductors and workers by removing their application fees and simplifying their application process. In addition, commercial lessors, bingo distributors, and bingo manufacturers will have a refund process for applications that are withdrawn or denied. The proposed amendments also benefit the public by aligning the Commission's rules with the newly-enacted statutory language.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Ryan Mindell, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on November 8, 2017, at 611 E. 6th Street, Austin, Texas 78701.

#### SUBCHAPTER D. LICENSING REQUIREMENTS

#### 16 TAC §§402.400 - 402.402, 402.404, 402.405, 402.407, 402.410, 402.411, 402.413, 402.420, 402.422, 402.424

The amendments are proposed under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and Section 13 of HB 2578 from the Regular Session of the 85th Texas Legislature, which required the Commission to adopt rules for its implementation.

This proposal is intended to implement the Texas Occupations Code, Chapter 2001.

##### §402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. The initial submittal of an [An] application is incomplete if the following information is not provided:

(1) All information requested on the application form and supplemental forms; [applicable schedules;]

(2) All supplemental information requested during the pre-licensing investigation period;

(3) The applicable license fee for a lessor, distributor, or manufacturer; and [;]

[(4) The required bond or other security, if applicable; and]

(4) [(5)] Authorized signatures as required by the Commission.

(b) Information submitted by an applicant on [in the form of] an applicable form [schedule] shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable form [schedule] must be legible and must include the following:

(1) the name and address of the organization as it appears on the application;

(2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;

(3) a statement identifying the information submitted;

(4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line or providing incomplete information may result in the denial of the license application.

(f) For an application to conduct bingo, an organization may choose to submit the application form without including a bond or

other security; information regarding previously held licenses; justice precinct, city or county certification; and information on intended playing location, days, times, and starting date.

(1) All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Within a number of calendar days required by the Commission on the applicable forms, the organization must remit the required bond or other security to the Commission and inform the Commission on the applicable supplemental forms of the intended playing location, days, times, and starting date of the occasions. If the organization fails to provide the required bond or other security as well as complete and accurate supplement forms within the required timeframe, the Commission will deny the application.

(3) An organization that has submitted the appropriate bond or other security and a complete application, including all applicable supplemental forms, must also submit updated, certified meeting minutes, current as of the submission of the applicable supplemental information, stating that the organization voted to conduct bingo at the licensed location.

(g) [(f)] Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

- (1) review of the Bingo Enabling Act;
- (2) review of the Charitable Bingo Administrative Rules;
- (3) licensee responsibilities;
- (4) process pertaining to the different types of license application;
- (5) bookkeeping and record keeping requirements as it involves bingo; and
- (6) a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(h) [(g)] The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(i) [(h)] Each licensed authorized organization [and organization] issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of licensing activity requested. [current license held.]

(j) [(i)] A license applicant may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License application fees for withdrawn license applications will be refunded, as provided for in the Bingo Enabling Act. [License fees submitted with an application that is subsequently withdrawn are not eligible for refund.] If the organization wants to reapply for a license, a complete new application and new license fee, if applicable, are required.

(k) [(j)] Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(l) [(k)] Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, may request to place its regular license in administrative hold, but only at the time of license renewal, as provided in §402.411 of this Chapter.

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested.

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and

(B) a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(m) [(h)] Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(n) [(m)] Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed Authorization of Representation for Bingo Licenses form. A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or on [(in)] the Authorization of Representation for Bingo Licenses form that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or on [(in)] the Authorization of Representation for Bingo Licenses form as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

[(n)] Eligibility determination pending identification of playing location, days, times, and starting date.}]

[(1)] An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.}]

[(2)] All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.}]

[(3)] An organization requesting a determination of eligibility status must submit with its application a non-refundable processing fee in an amount equal to a Class A regular license fee, which will be applied towards the organization's license fee should the organization become licensed.}]

[(4)] Upon a determination that the requirements in paragraph (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.}]

[(5)] Within 180 calendar days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the

information to the Commission within 180 calendar days, the Commission will proceed with denial of the application.}]

[(6)] After review of the applicant's submitted intended playing location, days, times, starting date, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 calendar days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.}]

[(7)] In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, certified meeting minutes stating that the organization voted to conduct bingo at the licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 21 calendar days of receipt of the organization's intended playing location, days, times, and starting date.}]

#### §402.401. Temporary License.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo liability--Includes, but is not limited to, any applicable license fee, late license renewal fee, prize fee, penalty, interest, or administrative penalty.

(2) Regular license--A license to conduct bingo that is effective for a period of one year [or two years] unless revoked or suspended by the Commission. A regular license may be referred to as an annual license.

(3) Temporary license--A license to conduct bingo that is in effect for a single bingo occasion.

(b) General.

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a bingo liability, has not distributed the proceeds calculated on the quarterly report for a charitable purpose, or has a regular license in administrative hold.

(2) Duration. A temporary license is valid for no more than four consecutive hours during any day.

(3) Display. The licensed authorized organization must conspicuously display during a temporary bingo occasion at the licensed bingo premises a temporary license, and, if applicable, verification of notification as referred to in subsection (d)(3)(D) [(d)(4)(E)] of this section.

[(4)] Occasion not held. If a licensed temporary occasion is not held, the organization will forfeit any license fees paid.}]

(4) [(5)] Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed six per calendar year. If over six previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than six of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Com-



mission will automatically revoke all temporary licenses in excess of the six per year [and the organization will forfeit any license fees paid].

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder that stated the specific date and time of any bingo occasion will likewise be denied or revoked.

(5) [(6)] All records that are required to be maintained under a regular license must be maintained for a temporary bingo license.

(c) The playing time of a temporary bingo occasion may not conflict with the playing time of any other license at the bingo premises on that date unless otherwise provided by law.

(d) Regular license holder.

(1) A regular license holder must apply for a temporary license at least seven calendar days prior to the bingo occasion.

[(2) A regular license holder may submit an application for a temporary license by fax only if the organization has sufficient credit or escrow funds with the Commission to cover the total number of temporary occasions requested.]

(2) [(3)] Quarterly reports filed by a regular license holder must include proceeds from all licensed temporary occasions held during the quarter.

(3) [(4)] The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license.

(A) The regular license holder must submit an application on the prescribed form that indicates the number of temporary licenses requested for the license period [along with the total amount of license fees for all temporary licenses requested].

(B) The regular license holder must notify the Commission of the date and time the temporary license will be used by submitting a form prescribed by the Commission.

(C) Any temporary license issued without the specific date or time identified must be used prior to the expiration date of the regular license in effect at the time the temporary license application was filed.

[(D) The Commission will not credit or refund a temporary license fee when an organization fails to timely notify the Commission of the playing date and time prior to the expiration of the regular license that was in effect when the temporary license was issued.]

(D) [(E)] The Commission shall provide a verification of receipt of notification that must be posted adjacent to the applicable temporary license during the bingo occasion.

(4) [(5)] In accordance with Occupations Code, §2001.108(e), the Commission may issue to a regular license holder additional temporary licenses in excess of the number of temporary licenses specified under Occupations Code, §2001.103(e) if the following conditions are met:

(A) The regular license holder submits a completed application on the form prescribed by the Commission;

(B) The date and times stated on the application are consistent with the day and times licensed to the organization that has ceased or will cease to conduct bingo as provided in Occupations Code, §2001.108; and

(C) The Commission has not acted on an amendment application filed under Occupations Code, §2001.108(a).

(5) [(6)] If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued; and any temporary license fees submitted will be retained by the Commission].

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar days prior to the bingo occasion.

(1) If an organization has never received a temporary license or 3 years have elapsed since the organization last held a temporary bingo occasion, the organization must submit a Texas Application for Temporary Bingo Occasions for Non-Licensed Organization - Section 2.

(2) Organizations who have held a temporary license occasion in the past three years may submit Texas Application for a Temporary Bingo Occasions for Non-Licensed Organization - Section 1 to apply for a temporary license.

[(f) Credits and Refunds.]

[(1) Except as otherwise provided in this subsection, temporary license fees submitted to the Commission are not eligible for refund or credit.]

[(2) If an organization applies for one or more temporary licenses and mistakenly submits more money than is actually required for the temporary license(s), the overpayment will be credited to the organization. The Commission will determine whether an overpayment has occurred on a case by case basis. Overpayments credited to an organization may be used for the organization's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date the temporary license fees were due. Overpayments credited to an organization remain eligible for refund under paragraph (3) of this subsection until the credits are used or the four year refund period expires, whichever comes first.]

[(3) An overpayment of a temporary license fee may be eligible for refund. In order for an overpayment to be refunded to an organization, an authorized representative of the organization must submit a complete written request for a refund to the Commission within four years of the latest date the temporary license fees were due. Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. The Commission will not certify that a refund is warranted if the requesting organization has any outstanding bingo liabilities to the State or has failed to file all necessary quarterly reports. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.]

[(4) An overpayment of a temporary license fee must either be used as credit or claimed for refund within four years of the latest date on which the temporary license fees were due. If an organization fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.]

§402.402. *Registry of Bingo Workers.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Chairperson--an individual named in accordance with Texas Occupations Code §2001.002(4-a) and §2001.102(b)(6).

(2) Bookkeeper--an individual ultimately responsible for the preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.

(3) Caller--an individual who operates the bingo ball selection device and announces the balls selected.

(4) Cashier--an individual who sells and records bingo card and pull-tab [~~pull tab~~] sales to bingo players and/or pays winners the appropriate prize.

(5) Completed Application--A registry application or renewal form prescribed by the Commission which is legible and lists at a minimum the applicant's complete legal name, address, social security number or registry number, date of birth, race, gender and signature.

(6) Manager--an individual who oversees the day-to-day operation of the bingo premises.

(7) Operator--means an active bona fide member of a licensed authorized organization that has been designated on a form prescribed by the Commission prior to acting in the capacity as the organization's operator.

(8) Provisional Employee--an individual who is employed by a licensed authorized organization as an operator, manager, cashier, usher, caller, or salesperson while awaiting the results of a background check, whether paid or not.

(9) Salesperson--an individual who monitors bingo players, sells bingo cards and pull-tabs [~~pull tabs~~], verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as an usher, floor worker, or runner.

(10) Usher--an individual who monitors bingo players, sells bingo cards and pull-tabs [~~pull tabs~~], verifies winning cards and pull-tabs and/or delivers the prize money to the winners; may be referred to as a salesperson, floor worker or runner.

(b) Who must be listed on the Registry of Approved Bingo Workers. Any individual who carries out or performs the functions of a caller, cashier, manager, operator, usher, salesperson, bookkeeper, or bingo chairperson as defined in subsection (a) of this section must be listed on the Registry of Approved Bingo Workers prior to being involved in the conduct of bingo.

(c) Each individual must submit a completed Texas Application for Registry of Approved Bingo Workers as prescribed by the Commission [and the requisite fee set in §402.404(l) of this title (relating to License and Registry Fees)] to remain on the Registry of Approved Bingo Workers.

(d) The registrant will be added to the registry as soon as possible after the Commission has determined that the individual is eligible to be involved in the conduct of bingo or act as an operator.

(e) For purposes of the Registry of Approved Bingo Workers, each operator, bookkeeper, and bingo chairperson must be designated on the licensed authorized organization's license to conduct bingo application.

(f) A licensed authorized organization must submit the name of a registered operator, bookkeeper, or bingo chairperson on a form prescribed by the Commission prior to the individual's acting in that capacity.

(g) A registered worker who fails to timely submit the prescribed form to renew listing on the registry[, along with the requisite fee set in §402.404(l) of this title,] may not be involved in the conduct

of bingo until the individual is again added to the registry. [Payment for the employment of a provisional employee as outlined in subsection (a)(8) of this section is an authorized bingo expense; however payment for non-registered workers is not an authorized bingo expense.] It is the responsibility of the licensed authorized organization to review the registry to confirm that the individual's registration is current.

(h) How to be listed on the Registry of Approved Bingo Workers. For an individual to be listed on the Registry of Approved Bingo Workers, an individual must:

(1) submit a completed Texas Application for Registry of Approved Bingo Workers form as prescribed by the Commission;

[(2) submit any required fee;]

(2) [(3)] submit a verifiable FBI or DPS fingerprint card if at the time of registration:

(A) the individual is residing outside of Texas; or

(B) the individual maintains a driver's license or registration in another state; and

(3) [(4)] be determined by the Commission to not be ineligible under Texas Occupations Code, §2001.105(a)(6) or the Commission's Rules.

(i) Incomplete Applications. The Commission will notify the applicant at the address provided if the registry application or renewal form submitted is not complete and will identify what is missing. The original application will be returned to the applicant for correction and resubmission. It is the responsibility of the registry applicant to resubmit a completed application before it may be processed. Failure to submit an FBI or DPS fingerprint card, if required, is grounds for denial or removal of the registration.

(j) An individual listed on the registry must notify the Commission of any changes to information contained on the Texas Application for Registry of Approved Bingo Workers on file with the Commission within 30 days of the change in information. Such notification shall be in writing or other approved electronic means.

(k) Identification Card for Approved Bingo Worker.

(1) The Commission will issue an identification card indicating that the individual is listed on [~~in~~] the registry. A registered worker and operator must wear his/her identification card while on duty.

(2) The identification card worn by the registered worker or operator while on duty must be visible.

(3) The identification card shall list the individual's name, unique registration number and registry expiration date as issued by the Commission. An individual may obtain the unique registration number and registry expiration date from the Registry of Approved Bingo Workers on the Commission's website or by requesting the registration number and registry expiration date from the Commission.

(4) An identification card is not transferable and may be worn only by the individual identified on the card.

(5) Upon request by a Commission employee, an individual described in subsection (a) of this section shall present personal photo identification in order to verify the identification card is that individual's card.

(l) How to Obtain Additional Approved Identification Cards.

(1) A completed identification card may be obtained from the Commission by submitting the required form.

(2) An individual who has been approved to work in charitable bingo may complete an identification card form provided by the Commission for use while on duty. Blank identification card forms may be obtained from the Commission. The individual requesting the identification card form(s) must submit any required fee and the required form for the blank identification card form.

(3) The identification card prepared by the individual may only be on a prescribed Commission card form and must be legible and include the individual's name, unique registration number, and registry expiration date.

(m) A licensed authorized organization which is reporting conduct where there is a substantial basis for believing that the conduct would constitute grounds for removal or refusal to list on the registry shall make the report in writing to: Bingo Registry, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

(n) The provisions of the Texas Occupations Code[;] §2001.313, related to the registry of bingo workers, do not apply to an authorized organization that does not have a regular license to conduct bingo who receives a temporary license to conduct bingo.

(o) If the Commission proposes to refuse to add or proposes to remove the individual from the Registry of Approved Bingo Workers consistent with Texas Occupations Code[;] §2001.313, the Commission will give notice of the proposed action as provided by Government Code, Chapter 2001.

(p) An individual receiving notice that the Commission intends to refuse to add to or intends to remove the individual from the Registry of Approved Bingo Workers may request a hearing. Failure to submit a written request for a hearing within 30 calendar days of the date of the notice will result in the denial of the application or removal of the registered worker from the registry.

(q) An individual who has been denied or removed from the registry because of a conviction for an offense listed under Occupations Code[;] §2001.105(b)[;] will not be eligible to reapply to be listed. An individual who has been denied or removed from the registry because of a disqualifying criminal conviction not listed under Occupations Code[;] §2001.105(b)[;] may reapply to be listed no earlier than five years after the commission of the offense, or as otherwise allowed under the Commission's Rules.

(r) A provisional employee must:

(1) indicate the playing location(s) where the individual is provisionally employed on the Texas Application for Registry of Approved Bingo Workers form submitted to the Commission.

(2) immediately stop working:

(A) after 14 days if the individual is not listed on the registry and is a resident of this state.

(B) after 45 days if the individual is not listed on the registry, not a resident of this state, and submitted a fingerprint card for a background investigation. If the fingerprint cards are returned by the law enforcement agency as unclassifiable, the Commission will notify the individual, and the individual may continue to be provisionally employed by submitting a written request and new fingerprint cards within 14 days of the notification.

(C) if found to be ineligible on the basis of the background investigation.

(3) wear an identification card while on duty with the registry applicant's name, "Provisional Employment" as the unique registration number, and the submission date of the registry application as the expiration date.

(s) A licensed authorized organization who employs a provisional employee must maintain a copy of the registry applicant's completed Texas Application for Registry of Approved Bingo Workers form submitted to the Commission until the individual is listed on the registry or the licensed authorized organization is notified that the individual is not eligible to be listed. Payment for the employment of a provisional employee as outlined in subsection (a)(8) of this section is an authorized bingo expense; however, payment for non-registered workers is not an authorized bingo expense.

#### §402.404. License Classes and [Registry] Fees.

(a) Definitions.

[(1) Eserow Account--An account established with the Commission by an authorized organization in which funds may be deposited for the advance payment of temporary licenses and license amendments.]

(1) [(2)] License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(2) [(3)] Regular License Classes and Applicable Fee Amount:

(A) There is no annual fee for a license to conduct bingo. The license-class-related amount used solely by the Commission to estimate the pro rata local share of prize fees related to licenses [annual fee for a license] to conduct bingo shall be as follows:

(i) Class A (annual gross receipts of \$25,000 or less) - \$132;

(ii) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;

(iii) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;

(iv) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;

(v) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;

(vi) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;

(vii) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;

(viii) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;

(ix) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;

(x) Class J (annual gross receipts of more than \$400,000) - \$3,300.

(B) The annual fee for a commercial lessor license shall be as follows:

(i) Class A (annual gross rentals from licensed organizations of not more than \$12,000) - \$132;

(ii) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000) - \$264;

(iii) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000) - \$396;

(iv) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000) - \$528;

(v) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000) - \$792;

(vi) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000) - \$1,188;

(vii) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000) - \$1,584;

(viii) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000) - \$1,980;

(ix) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000) - \$2,640;

(x) Class J (annual gross rentals from licensed organizations of more than \$90,000) - \$3,300.

(C) Manufacturer's License. The annual fee for a manufacturer's license shall be \$3,000.

(D) Distributor's License. The annual fee for a distributor's license shall be \$1,000.

(b) Original License Application.

[(1) License to Conduct Charitable Bingo.]

[(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization's general fund bank account.]

[(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant's license fee is based and must be submitted.]

(1) [(2)] Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(2) [(3)] Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

[(e) Changes Within Six Months of a Licensed Authorized Organization's License Term.]

[(1) An organization shall re-estimate its annual gross receipts and submit any balance due in license fee amount if there is an increase in the number of bingo occasions conducted within six months of the issuance of the original license to conduct bingo.]

(c) [(2)] An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(1) [(A)] the number of organizations conducting bingo at a licensed location; and

(2) [(B)] the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a [license to conduct bingo or] license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) Upon written request by an organization to renew its [license to conduct bingo or] license to lease bingo premises that is in or going in administrative hold, the organization shall pay a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, in lieu of the recalculated fee amount from the preceding license period. There is no renewal license fee for an organization renewing its license to conduct bingo that is in or going in administrative hold, but the imputed license fee used to estimate the pro rata local share of prize fees for such an organization is a Class A license renewal fee.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

(A) playing location; or

(B) rental amount per occasion. [; or]

[(C) increase in the number of occasions bingo is conducted.]

[(5) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require an organization to submit an additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.]

(5) [(6)] If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require the commercial lessor [or licensed authorized organization] to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises, if the commercial lessor [or licensed authorized organization] amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments. An applicant for a commercial lessor license [issued under the Bingo Enabling Act] that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(2)[(3)].

(f) Regular License Class [Fee] Recalculation.

(1) For the purpose of determining the license class [fee] recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license class [fee] recalculation for a two year license to [conduct bingo or license to] lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license classes and their associated fees. The annual [gross receipts or] gross rental income[; as applicable;] shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license class [fee] apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter [unless the accounting unit bases its distribution of proceeds on the number of occasions].

[(4) For accounting units who base their distribution of proceeds on the number of occasions a member conducts, the gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of occasions conducted by all unit members and then multiplying by the number of occasions reported by the unit member.]

[(5) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization's license fee.]

(4) [(6)] If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average the quarterly gross receipts or gross rental income for the quarter(s) reported to determine the organization's license class. [fee.]

(5) [(7)] License no longer exists.

[(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.]

(A) [(B)] Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(B) [(C)] If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license class [fee] for the prior year) is used to recalculate the final license class, and if appropriate, any fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license class [fee] recalculation.

(6) [(8)] The Commission may recalculate license classes [fees] for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental

income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(7) [(9)] If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license class [fees] for up to four immediately preceding license periods.

[(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a Class A license fee will apply for the second year of the license for the purposes of recalculating the license fee.]

(g) Overpayment of License Fee.

(1) An overpayment of a [bingo conductor's or] commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee [or accounting unit] mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

[(4) All regular license fee overpayments submitted by an accounting unit for a unit member are only eligible to be credited or refunded to that unit member.]

(h) Refunds.

(1) An applicant or licensee may request a refund of the fee for an initial or renewal commercial lessor's license, initial or renewal distributor's license, or initial or renewal manufacturer's license if they request withdrawal of the application before the license is issued. Upon such a request, the Commission will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of receiving the request.

(2) If the Commission denies an initial or renewal commercial lessor license application, initial or renewal distributor's license application, or initial or renewal manufacturer's license application, it will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of denying the application.

[(1) Except as provided by this subsection, regular license fees submitted to the Commission are not eligible for refund.]

(3) [(2)] A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(4) [(3)] Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

[(j) Eserow Accounts.]

[(1) An authorized organization may submit funds to the Commission to be placed in an eserow account and used for future temporary license fees or license amendment fees. However, any funds placed in, or otherwise credited to, an eserow account are not eligible for refund and must be used by the end of the licensee's subsequent license period. If a licensed authorized organization fails to use eserow account funds within this time period, the funds will be retained by the Commission.]

[(2) An accounting unit may submit funds to be placed in a unit member's eserow account and used for that member's future temporary license fees or license amendment fees. At the time of submission of the funds, the accounting unit must designate in writing the unit member's eserow account in which the funds will be placed. Funds placed in a unit member's eserow account are not eligible for refund and may not be transferred to another unit member's eserow account or otherwise credited to another unit member.]

(j) [(k)] Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to calculate [reecalculate] the regular license class [fee].

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements[, annual gross receipts fee schedule,] and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

[(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in subsection (a)(3)(A) of this section.]

[(4) Registry of Approved Bingo Workers.]

[(1) A fee of \$25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission. The Commission will not consider or act upon an application until the requisite fee is paid.]

[(2) Except as authorized by the Charitable Bingo Operations Director, or their designee, an application to renew listing on the registry received by the Commission more than 60 days prior to the expiration date of the current registry listing will be returned unprocessed by the Commission to the sender.]

§402.405. Temporary Authorization.

(a) A temporary authorization shall be issued only to a person who is not licensed by the Commission but who has filed a complete application for an original license to conduct a charitable bingo activity.

(b) Upon the applicant's request, the Commission will issue a temporary authorization for the activity requested on the license application by the 31st calendar day after the Commission's receipt of an application that is complete in accordance with §402.400(a) of this chapter if the following are in compliance with the Act and the Rules.

(1) For all licenses: eligibility of all persons listed on the application requiring criminal background investigations.

(2) For a commercial lessor license: eligibility of applicant as provided by Texas Occupations Code, §2001.152.

(3) If an applicant asserts in writing that its application is complete, the Commission will grant or deny the application, or make a determination on temporary authorization.

(c) A temporary authorization to conduct a bingo-related activity may only be issued to a person who will conduct a bingo-related activity at the same location for which the person has a pending original application to conduct a bingo-related activity.

(d) A temporary authorization shall be issued for a stated period of time not to exceed 60 days. A temporary authorization may be extended upon written request by the person to whom the temporary authorization was issued. Such request must be filed with the Commission at least seven working days prior to the time the temporary authorization expires. Extensions shall be for a period of time not to exceed 60 days. No more than two extensions may be issued.

(e) A request for an extension shall include:

(1) the complete name of the organization requesting the extension;

(2) the Texas taxpayer identification number of the organization requesting the extension;

(3) a complete explanation of the basis for the request; and

(4) the specific reason(s) supporting the need for an extension.

(f) An organization that is not in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules will not be granted an extension unless the organization becomes compliant during the period of the original temporary authorization.

(g) An organization conducting bingo under a temporary authorization that desires to obtain a temporary license shall be subject to the same requirements in §402.401(c) of this chapter regarding an organization not holding a regular license to conduct bingo.

(h) A temporary authorization is not a license.

(i) A temporary authorization may not be amended.

(j) A regular license that has been issued to an applicant shall expire one year [or two years] from the date of the first issuance of any temporary authorization under this section.

[(k) An organization that has been issued an eligibility determination in accordance with §402.400(n) of this chapter is not eligible for a temporary authorization.]

(k) [(H)] For the purposes of Texas Occupations Code, §2001.304(a), an application for an activity is considered issued or denied on the date the Commission issues a license or notice of denial to the applicant.

**§402.407. Unit Manager.**

[(a)] Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) the Commission receives the unit accounting agreement executed by all members of the unit with the name of the unit manager designated therein; and

[(B) the individual holds a unit manager license issued by the Commission;]

[(C) the individual posts a bond or security, for each unit, as prescribed by §402.603 of this chapter; and]

(B) [(D)] the individual provides information to the Commission relating to the location where the unit manager services will be performed and where the records will be maintained.

(2) A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent notification to the Commission [application for a unit manager license or renewal]. The unit manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

[(b) Annual License Fee for a Unit Manager. The non refundable annual license fee for a unit manager may not exceed \$250.00.]

**§402.410. Amendment of a License - General Provisions.**

(a) The Commission will not approve a license amendment application with an effective date that is not within the licensed authorized organization's or commercial lessor's current license period.

(b) A licensee may amend a license renewal application prior to its approval.

(c) The term "effective date", when used in this section, means the first day that the amended changes are to begin.

(d) A licensee may not begin activities under the amended license until the following have occurred:

(1) the effective date; and

(2) licensee's receipt and display at the playing location of official written notification or the amended license authorizing the change.

(e) The fee to amend any commercial lessor, manufacturer, or distributor license issued under the Bingo Enabling Act shall be \$10. The fee to amend a license to conduct bingo is \$0.

[(1) Except as otherwise provided in this subsection, fees submitted to the Commission to amend a license are not eligible for refund or credit.]

[(2) If a licensee applies for one or more amendments and mistakenly submits more money than is actually required for the

amendment(s), the overpayment will be credited to the licensee. The Commission will determine whether an overpayment has occurred on a case by case basis. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date the amendment fees were due. Overpayments credited to a licensee remain eligible for refund under paragraph (3) of this subsection until the credits are used or the four year refund period expires, whichever comes first.]

[(3) An overpayment of a license amendment fee may be eligible for refund. In order for an overpayment to be refunded to a licensee, an authorized representative of the licensee must submit a complete written request for a refund to the Commission within four years of the latest date the license amendment fees were due. Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. The Commission will not certify that a refund is warranted if the requesting licensee has any outstanding bingo liabilities to the State or has failed to file all necessary quarterly reports, if applicable. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.]

[(4) An overpayment of an amendment fee must either be used as credit or claimed for refund within four years of the latest date on which the amendment fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.]

[(5) A licensee may request a refund of any license amendment fee paid if the licensee requests withdrawal of the amendment application before an amended license is issued. Upon such a request, the Commission will refund half of any fee paid within 30 days of receiving the request. If the Commission denies an amendment application, it will refund half of any fee paid within 30 days of that denial.]

**§402.411. License Renewal.**

(a) Any license issued under the Bingo Enabling Act expires one calendar year or two calendar years from the first date of the license period, as specified on the license.

(b) In order to renew a license issued under the Bingo Enabling Act, a licensee must timely file an application for renewal with the Commission. The renewal application must be on a form prescribed by the Commission. The Commission will not approve a renewal application until the application is complete and the licensee submits the requisite fee pursuant to §402.404 of this title (relating to License Class and [Registry] Fees). A licensee is solely responsible for the timely filing of an application for renewal of its regular license.

(c) The Commission may notify licensees regarding the expiration of their license(s) and the potential for renewal. Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance for untimely filing of a renewal application.

(d) To be timely filed:

(1) the renewal application and payment, if applicable, of the estimated license fee must be received by the Commission no later than the license expiration date; or

(2) the renewal application's envelope postmarked date must clearly show a date that is no later than the license expiration date, unless the expiration date is a Saturday, Sunday, or legal holiday,



in which event the application is due the next day which is not a Saturday, Sunday, or legal holiday; or

(3) an application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document if the document date is less than seven days earlier than the date of receipt.

(e) Notwithstanding subsection (b) of this section, if a renewal application is not timely filed, a licensee may renew their license by filing a complete application for renewal with the Commission and, if applicable, submitting the requisite license fee and late license renewal fee. The late license renewal fee is based on the estimated license fee for the renewal period. Penalty amounts are calculated as follows: Figure: 16 TAC §402.411(e) (No change.)

(f) Any required [The] late license renewal fee is due within 14 calendar days of the date of the written notification by the Commission of the amount due.

(g) The Commission will not issue a temporary license to a licensed authorized organization that has not filed [files] its renewal application [late until the Commission receives the late license renewal fee].

~~[(h)]~~ The Commission will not issue an amended license to a licensed authorized organization or licensed commercial lessor that files its renewal application late until the Commission receives the late license renewal fee.]

~~[(h)]~~ [(H)] A late license renewal fee is not refundable.

~~[(i)]~~ [(J)] License renewal applications received more than 60 days after the license expiration date will be returned unprocessed by the Commission to the sender.

~~[(j)]~~ [(K)] To be complete, an application for renewal must contain all information that is required to be provided in or with the initial license application, as well as any other information required by the Commission.

(1) All information submitted to the Commission must be legible, correct, and complete.

(2) If any information previously submitted to the Commission with the licensee's initial license application or a previous renewal application has not changed since the information was last submitted to the Commission, the renewal applicant need not provide that information again. The applicant must certify on the renewal application that no changes have been made to the specific information since it was last submitted to the Commission.

(k) [(H)] Unless otherwise provided by law or rule, the general licensing provisions in §402.400 of this title (relating to General Licensing Provisions) shall govern the license renewal process, including the submission and review of the renewal application, as if the renewal application was an initial license application.

~~[(l)]~~ [(M)] Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 60 days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

*§402.413. Military Service Members, Military Veterans, and Military Spouses.*

(a) The following terms used in this section are defined in §55.001 of the Occupations Code as follows:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) As soon as practicable after a military service member, military veteran, or military spouse applies in his or her individual capacity for a commercial lessor license, distributor license, manufacturer license, [unit manager license,] or listing on the bingo worker registry, the Commission will process the application and, if warranted, issue the license or list the applicant on the bingo worker registry. A military service member or military veteran must provide the Commission with definitive proof of his or her current or prior military service. A military spouse must provide the Commission with:

(1) definitive proof of his or her spouse's current military service; and

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member.

(c) The Commission will waive the license [or bingo worker registry] fee for a military service member or military veteran that applies in his or her individual capacity for a commercial lessor license, distributor license, or manufacturer license[, unit manager license, or listing on the bingo worker registry]. The applicant must provide the Commission with definitive proof of the applicant's current or prior military service.

(d) The Commission will waive the license [or bingo worker registry] fee for a military spouse that applies in his or her individual capacity for a commercial lessor license, distributor license, or manufacturer license, [unit manager license, or listing on the bingo worker registry,] provided that the applicant holds a current license issued by another state or jurisdiction that is substantially equivalent to the license [or bingo worker registry] for which the applicant is applying. The applicant must provide the Commission with:

(1) definitive proof of his or her spouse's current military service;

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member; and

(3) a photocopy of his or her current out-of-state license that is substantially equivalent to the license [or bingo worker registry] for which the applicant is applying.

(e) An individual licensed in his or her individual capacity as a commercial lessor, distributor, or manufacturer[, or unit manager] is exempt from the late license renewal fee provided for in §402.411(e) of this chapter if the individual can demonstrate, to the satisfaction of the Commission, that the individual failed to renew his or her license in a timely manner because the individual was serving as a military service member.

*§402.420. Qualifications and Requirements for Conductor's License.*



An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.

Figure: 16 TAC §402.420

[Figure: 16 TAC §402.420]

*§402.422. Amendment to a Regular License to Conduct Charitable Bingo.*

(a) A licensed authorized organization must file a form prescribed by the Commission [and submit a \$10 fee] to amend its licensed:

- (1) playing days;
- (2) playing times;
- (3) playing location;
- (4) bingo chairperson;
- (5) organization name; or
- (6) primary business office.

(b) Playing days or playing times.

(1) An organization amending its playing day(s) or playing time(s) must specify on the form each playing occasion day and time that the organization intends to conduct bingo at the location.

(2) The playing day(s) or time(s) specified on the form may not:

(A) conflict with the playing day(s) or time(s) of any other application or license issued for that location;

(B) exceed the maximum number of bingo occasions per day allowed under Texas Occupations Code, §2001.419(c) and (d); or

(C) exceed three occasions during a calendar week or four hours per occasion.

(c) Playing location.

(1) An organization amending its playing location must return:

(A) its current bingo license if available, or a certified statement signed by the bingo chairperson indicating that the license is not available, unless the license is currently in administrative hold status or its renewal application is pending; and

(B) a copy of the meeting minutes recording that the organization voted to move the bingo playing location and indicating the exact playing location address and name of the location, if applicable.

(2) A licensee shall display a copy of its license at the current playing location if the license was surrendered upon application for an amendment.

(d) Organization name. An organization amending its organization name must submit a copy of the following:

(1) all amended organizing instruments reflecting the name change;

(2) written notice sent to the Internal Revenue Service updating the organization's record if the organization is required to maintain a 501(c) exemption;

(3) meeting minutes recording that the organization voted to change its name; and

(4) letter approving the name change from the parent organization, if applicable.

(e) Primary business office location.

(1) An organization may not relocate its primary business office to a different county solely for the purpose of relocating its bingo playing location. If the new location is not adjacent to the current county of its primary business office, the organization must have at least 20 percent of its members' residences located in the county to which the organization is moving.

(2) An organization changing its primary business office location must submit a copy of the following:

(A) meeting minutes recording that the licensed authorized organization voted to move its primary business office to the proposed location and the reason for the move;

(B) if moving to a non-adjacent county, the licensed authorized organization's membership list showing names and county of residence with at least 20 percent of the members' residences located in the non-adjacent county to which the organization is moving; and

(C) letter approving the organization's primary business office relocation to another county from the parent organization, if applicable.

(f) Meeting minutes submitted in accordance with subsections (c)(1)(B), (d)(3), and (e)(2)(A) of this section must be signed and certified as true and correct by an officer of the organization.

*§402.424. Amendment of a License by Electronic Mail, Telephone or Facsimile.*

(a) The term "effective date," when used in this section, shall mean the first day that the changes to the day(s) or time(s) bingo is conducted by the organization are to begin.

(b) A licensed authorized organization may change the day(s) or time(s) it conducts bingo by electronic mail, telephone or facsimile [provided the organization has sufficient amendment license fee credit]. The request should be received no later than noon the business day before the requested effective date of the amended license.

(1) To change by telephone the day(s) or time(s) the organization conducts bingo, an authorized requestor must speak directly to a License and Permit Specialist in the Licensing Services Department of the Charitable Bingo Operations Division, who will verify the caller's authority to request an amendment.

(2) To change by facsimile the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the facsimile number provided on the prescribed application form.

(3) To change by electronic mail the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the bingo service electronic mail address provided on the prescribed application form.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bob Biard  
General Counsel  
Texas Lottery Commission  
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For further information, please call: (512) 344-5392

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**SUBCHAPTER F. PAYMENT OF TAXES,  
PRIZE FEES AND BONDS**

**16 TAC §402.603**

The following amendments are proposed under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and Section 13 of HB 2578 from the Regular Session of the 85th Texas Legislature, which required the Commission to adopt rules for its implementation.

**§402.603. Bond or Other Security.**

**(a) Bond or Other Security Required.**

(1) An applicant for a regular license to conduct charitable bingo must submit security consistent with the provisions of this section. A licensed authorized organization must maintain the security until the organization ceases to conduct bingo and the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the security amount for a regular license to conduct charitable bingo is based on the license class. The security amount is:

- (i) Class A - \$125.00.
- (ii) Class B - \$325.00.
- (iii) Class C - \$600.00.
- (iv) Class D - \$825.00.
- (v) Class E - \$1,225.00.
- (vi) Class F - \$1,800.00.
- (vii) Class G - \$2,125.00.
- (viii) Class H - \$2,675.00.
- (ix) Class I - \$3,275.00.
- (x) Class J - \$7,000.00

(B) If at any time a licensed authorized organization fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, then the organization's security amount may be calculated at three times its highest quarterly prize fee for the four most recent quarters or for the highest quarter filed if less than four.

(C) If a licensed authorized organization has fully paid all prize fees and associated penalties, if any, prior to a final jeopardy determination for eight (8) consecutive quarters, the amount of the requisite security will be reduced to \$100.00. If at any time an organization paying the reduced security amount fails to fully pay its requisite prize fees and any associated penalties and interest by the due date and a jeopardy determination becomes final, then the Commission may calculate the organization's security amount in accordance with §402.603(a)(1)(A) or (B) of this chapter.

(2) An applicant for a manufacturer's license must submit a cash bond or bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state. A licensed manufacturer must maintain the bond until the license is relinquished or revoked.

[(3) An applicant for a unit manager license must submit security consistent with the provisions of this section. A licensed unit manager must maintain the security until the license is relinquished or revoked.]

[(A) Except as otherwise provided in this section, the unit manager's security amount shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter.]

[(B) If at any time a unit manager fails to fully pay the unit's requisite prize fees by the due date and a jeopardy determination becomes final, the security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. If the unit manager changes, the new unit manager must file security.]

[(C) Members of an accounting unit with a licensed unit manager are not required to submit security until the member withdraws or is removed from the unit.]

**(3) [(4)] Accounting Units.**

(A) An accounting unit may submit and maintain one bond or other security to cover each of the unit's member organizations. Except as otherwise provided in this section, the amount of the security shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter. If a unit member organization subsequently withdraws or is removed from the unit, that organization is responsible for obtaining and maintaining the requisite security.

(B) If at any time an accounting unit fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, the unit's security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the organizations that were in the unit at the time of the prize fee delinquency. If a unit member organization withdraws or is removed from such a unit, that organization's security amount shall be equivalent to its share of the unit's security amount, and the unit's security amount may be reduced by an amount equivalent to the exiting organization's share. If another organization subsequently joins such a unit, the unit's security amount will increase by the amount of the newly-joined organization's security amount.

(b) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees:

(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.

(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.

(3) Letters of credit from financial institutions.

(4) United States Treasury bonds, readily convertible to cash.

(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.

(c) Forfeiture.

(1) If a licensed authorized organization or [;] accounting unit[; or unit manager] pays less than the total amount of prize fee due, the Commission shall notify the licensed authorized organization or [;] accounting unit [; or unit manager] of the delinquency via the "Texas Notice of Fee Due and Jeopardy Determination" for the quarter in which the liability exists.

(2) If the licensed authorized organization or [;] accounting unit[; or unit manager] does not make the required payment by the date stated in the notice provided under subsection (c)(1), the Commission will demand the bond or other security or any part of the bond or other security from the holder of the bond or other security necessary to pay the amount of prize fee due.

(3) The Commission will notify the licensed authorized organization or [;] accounting unit [; or unit manager] and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.

(d) Release of Bond or Other Security. The Commission will release a bond or other security upon the relinquishment or revocation of the license for which the security was furnished, provided that the Commission determines that no prize fee, penalty, or interest remains due and payable. The Commission will notify the former licensee in writing that the security has been released. If an accounting unit maintains one bond or other security for its member organizations, and one or more of the unit member's licenses are relinquished or revoked, then the Commission will notify the accounting unit in writing that its security amount may be reduced to an amount sufficient to cover only current unit members.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bob Biard

General Counsel

Texas Lottery Commission

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## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

#### SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

#### 19 TAC §§4.52 - 4.59, 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.52 - 4.59, and §4.62, Rules Applying to All Public Institutions of Higher Education in Texas, concerning the Texas Success Initiative (TSI) to support developmental education reform efforts as related to Texas Education Code (TEC), Chapter 51, Subchapter F-1, Texas Success Initiative. The intent of the amendments is to incorporate into existing rules changes and provisions enacted by House Bill 2223, 85th Texas Legislature, Regular Session, as well as to provide clarification of existing rules to simplify implementation. The amendments would specify the location of the TSI in the TEC, clarify and add certain definitions, further explain the English for Speakers of Other Languages (ESOL) waiver, clarify advisement requirements, outline specific requirements for corequisites, and otherwise add language to provide clarity for institutions in implementing TSI.

R. Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Booker has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be the improvement of persistence and success rates of students entering higher education who are not college ready. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Suzanne Morales-Vale, Director of Developmental and Adult Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or [suzanne.morales-vale@theccb.state.tx.us](mailto:suzanne.morales-vale@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §51.344, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, Chapter 51, Subchapter F-1 concerning the Texas Success Initiative.

The amendments affect the Texas Education Code, Chapter 51, Subchapter F-1.

#### §4.52. Authority.

Under Texas Education Code, §51.344 [~~§§51.307~~], the Board is authorized to adopt rules to implement the provisions of Texas Education Code, Chapter 51, Subchapter F-1, Texas Success Initiative [~~§§51.3062~~]. Texas Education Code, §51.403(e), authorizes the Board to establish guidelines and reporting requirements.

#### §4.53. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise.

(1) - (6) (No change.)

(7) Co-requisite (also known as corequisite or mainstreaming)--An instructional strategy whereby undergraduate students as defined in paragraph (24) of this section are co-enrolled or concurrently enrolled in a developmental education course or NCBO[;] as defined in paragraph (18) of this section[;] and the entry-level freshman course