






# INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

	Approved	Denied
<b>To:</b> J. Winston Krause, Chairman Carmen Arrieta-Candelaria, Commissioner Doug Lowe, Commissioner Robert Rivera, Commissioner		
<b>From:</b> Bob Biard, General Counsel 		
<b>Date:</b> April 12, 2018		
<b>Re:</b> Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §402.102 (Bingo Advisory Committee), 16 TAC §402.300 (Pull-Tab Bingo), and 16 TAC §402.402 (Registry of Bingo Workers)		

Attached for your consideration are Commission staff's proposals for the three referenced rule amendments. The purpose of the proposed amendments to the Bingo Advisory Committee (BAC) rule is to update and streamline the BAC member eligibility and appointment procedures, and procedural requirements regarding BAC meetings. These changes will provide greater flexibility to the Commission in administering the BAC process to enhance bingo industry participation in advising the Commission on charitable bingo regulatory issues.

The purpose of the proposed amendments to the Pull-Tab Bingo rule is to remove an unnecessary provision requiring detailed information to be provided in a packing slip inside each deal of pull-tab bingo tickets. These changes will reduce regulation of the manufacture of pull-tab bingo tickets.

The purpose of the proposed amendments to the Registry of Bingo Workers rule is to (1) remove a requirement that a provisional employee of a licensed authorized organization (bingo conductor) must indicate the playing location(s) where they are provisionally employed on the Application for Registry of Approved Bingo Workers (Bingo Registry) form submitted to the Commission; and (2) extend the length of time a provisional employee who is not a resident of Texas may work without being listed on the Bingo Registry from 45 days to 75 days. These changes will provide greater flexibility to out-of-state bingo worker applicants and their bingo conductor employers while awaiting the results of such an applicant's criminal history background check.

The submissions prepared for the *Texas Register* include a notice of public hearing to be held on the proposed amendments at 10:00 a.m. on Wednesday, May 9, 2018.

**Recommendation:** Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of 30 days.

1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.102  
2 (Bingo Advisory Committee). The purpose of the proposed amendments is to update and  
3 streamline the Bingo Advisory Committee (BAC) member eligibility and appointment procedures,  
4 and procedural requirements regarding BAC meetings.

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

13           J. Winston Krause, Commission Chairman, has determined that for each year of the first  
14 five years the proposed amendments will be in effect, the anticipated public benefit is providing  
15 greater flexibility to the Commission in administering the BAC process to enhance bingo industry  
16 participation in advising the Commission on charitable bingo regulatory issues.

17           Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
18 Government Growth Impact Statement for the proposed rule amendments. For each year of the  
19 first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined  
20 the following:

21           (1) The proposed amendments do not create or eliminate a government program.

22           (2) Implementation of the proposed amendments does not require the creation of new  
23 employee positions or the elimination of existing employee positions.

1 (3) Implementation of the proposed amendments does not require an increase or decrease  
2 in future legislative appropriations to the Commission.

3 (4) The proposed amendments do not require an increase or decrease in fees paid to the  
4 Commission.

5 (5) The proposed amendments do not create a new regulation.

6 (6) The proposed amendments do not expand or limit an existing regulation.

7 (7) The proposed amendments do not increase or decrease the number of individuals  
8 subject to the rule's applicability.

9 (8) The proposed amendments do not positively or adversely affect this state's economy.

10 The Commission requests comments on the proposed amendments from any interested  
11 person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery  
12 Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by  
13 email at *legal.input@lottery.state.tx.us*. Comments must be received within 30 days after  
14 publication of this proposal in the Texas Register in order to be considered. The Commission also  
15 will hold a public hearing to receive comments on this proposal at 10:00 AM on May 9, 2018, at  
16 611 E. 6th Street, Austin, Texas 78701.

17 The amendments are proposed under the Texas Occupations Code §2001.054, which  
18 authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and  
19 Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws  
20 under the Commission's jurisdiction.

21 This proposal is intended to implement the Texas Occupations Code, Chapter 2001.  
22 §402.102. Bingo Advisory Committee.

23 (a) (No change.)

(b) What is the composition of the Bingo Advisory Committee?

(1) The Commission may appoint nine persons as members of the BAC.

(2) The Commission must appoint members to represent the following interest groups:

(A) the public,

(B) conductors that are not licensed commercial lessors,

(C) conductors that are licensed commercial lessors, and

(D) commercial lessors.

~~(3) The Commission may appoint members to represent:~~

~~(E)(A)~~ licensed manufacturers, and

~~(F)(B)~~ licensed distributors.

~~(3)(4)~~ If there is not an individual to represent one of the required interest groups, the Commission may appoint a member from the remaining interest groups.

(c) What are the minimum eligibility requirements to serve on the BAC?

(1) A member may not represent a licensee that is delinquent in payment of any prize fees or gross rental taxes for which a final jeopardy determination has been made by the Commission.

~~(2) A member may not represent a licensee that has a license denied, revoked or suspended by the Commission.~~

~~(2)(3)~~ A member representing the public may not be an individual who is required by statute to be listed on a conductor, commercial lessor, manufacturer, or distributor license application.

~~(3)(4)~~ A member must meet the criminal history standards in Bingo Enabling Act Sections 2001.105(b), 2001.154(a)(1)~~2001.154(a)(5)~~, 2001.202(1), and 2001.207(1).

1           ~~(4)(5)~~ A nominee for membership must provide complete and accurate information on the  
2 nomination form.

3 (d) How are members nominated to serve on the BAC?

4           (1) Individuals may submit a nomination form during the ~~regular~~ nomination period  
5 determined by the Commission. which begins on March 1 and ends on April 30 each year and at  
6 other times if there is an unexpected member vacancy.

7           (2) Nomination forms are available from the Charitable Bingo Operations Division or the  
8 Commission's web site.

9 (e) What is the appointment process?

10           (1) Commission ~~Charitable Bingo Operations Division~~ staff verifies ~~verify~~ eligibility and  
11 qualifications of nominees and sends ~~send~~ all nominations that meet minimum requirements to  
12 each Commissioner.

13           (2) Each Commissioner may interview those nominees. ~~Charitable Bingo Operations~~  
14 ~~Division staff rank the nominations with advice and consultation of the Executive Director as~~  
15 ~~appropriate.~~

16           (3) ~~Charitable Bingo Operations Division staff provide to the BAC at the first meeting after~~  
17 ~~June 1 each year, and at other times if there is an unexpected member vacancy, the names of those~~  
18 ~~nominees that staff will recommend to the Commissioners.~~

19           ~~(3)(4)~~ The BAC may be a resource to the Commission by reviewing nominations,  
20 interviewing prospective members, and submitting its recommendations to the ~~Charitable Bingo~~  
21 ~~Operations Division and the Commissioners for consideration.~~ However, the BAC will not act to  
22 exclude nominees.

1       ~~(5) Each Commissioner may interview those nominees recommended by staff or other~~  
2 ~~nominees.~~

3       ~~(4)(6) The Commissioners shall may appoint a nominee based on a review of the~~  
4 ~~nomination form and/or interview. staff or BAC recommendation or may appoint any other~~  
5 ~~nominee.~~

6 (f) How long may members serve on the BAC?

7       (1) The Commission appoints each member to serve for a one-year ~~three-year~~ term or until  
8 the Commission appoints a successor.

9       ~~(2) Members serve staggered terms of three years so that three members' terms expire~~  
10 ~~August 31 each year.~~

11       ~~(2)(3)~~ Each member serves at the pleasure of the Commission.

12 (g) May a BAC member be removed from the BAC before the member's term has expired?

13       ~~(1) The Commission may remove a member at any time without cause.~~

14       ~~(2) The Commission may consider any of the following, among other things, to be grounds~~  
15 ~~for inquiry and possible removal of a person from the BAC:~~

16       ~~(A) failure to meet the eligibility requirements described in subsection (c) of this~~  
17 ~~section;~~

18       ~~(B) failure to attend two consecutive, regular scheduled meetings for any reason;~~

19       ~~(C) unlawful conduct;~~

20       ~~(D) making of false statements, including omissions;~~

21       ~~(E) acts involving dishonesty, fraud, deceit or misrepresentation;~~

22       ~~(F) abuse of legal process;~~

23       ~~(G) violation of an order of a court;~~

1           ~~(H) conduct evidencing mental or emotional instability; or~~

2           ~~(I) conduct evidencing drug or alcohol abuse or dependency.~~

3           ~~(3) Failure to disclose a publicly filed allegation of any of the items in paragraph (2) of this~~  
4 ~~subsection is grounds for removal.~~

5       (h) When and where does the BAC meet?

6           (1) The BAC may meet quarterly or more frequently at the Commission's request.

7           (2) BAC meetings must be held at the Commission headquarters in Austin, Texas;  
8 provided that, meetings except one meeting per year may be held at a location in Texas other than  
9 Austin, subject to the discretion of the Commission and BAC presiding officer. ~~Charitable Bingo~~  
10 ~~Operations Division Director.~~

11       (i) (No change.)

12       (j) Are BAC meetings open to the public? Yes. The BAC must publish notice of a BAC meeting  
13 at least 10 full days prior to the date of the meeting. The meeting notice shall include the time,  
14 day, and location of the meeting as well as the agenda items. The BAC presiding officer shall  
15 request the Commission, through Commission staff, post the notice on the Commission's web site.  
16 ~~BAC meetings shall be open meetings in accordance with the Open Meetings Act, Texas~~  
17 ~~Government Code, Chapter 551.~~

18       (k) (No change.)

19       (l) Are minutes kept of BAC meetings?

20           (1) The BAC must keep minutes of each meeting reflecting all formal action taken.

21           (2) The BAC may consider a transcript prepared by a court reporter to be the minutes of  
22 the meeting. The Commission will provide a court reporter (or transcript service if a court reporter  
23 is not available) to prepare a transcript of each BAC meeting.



1 (3) The BAC must approve the minutes at its next meeting, and file the approved minutes  
2 with the Charitable Bingo Operations Division Director, who shall post the approved minutes on  
3 the Commission's web site.

4 (m) What is the BAC's annual workplan?

5 ~~(1) The BAC must submit to the Commission for approval at the first meeting prior to~~  
6 ~~September 1 each year a workplan to guide the activities of the BAC for the following year.~~

7 ~~(1)(2) The workplan will contain those items that the BAC and the Commission~~  
8 ~~determines. determine are relevant to the state of the bingo industry.~~

9 (2) The BAC may submit to the Commission for their consideration and approval  
10 additional items for the workplan that are relevant to the state of the bingo industry.

11 (n) What are the BAC's reporting requirements?

12 (1) The BAC must report their activities quarterly to the Commission, although the  
13 Commission may require reporting more frequently.

14 (2) The BAC will report annually to the Commission the BAC's perspective on the state of  
15 the charitable bingo industry in Texas with specific comments on the following:

16 (A) adjusted gross receipts;

17 (B) net receipts;

18 (C) charitable distributions;

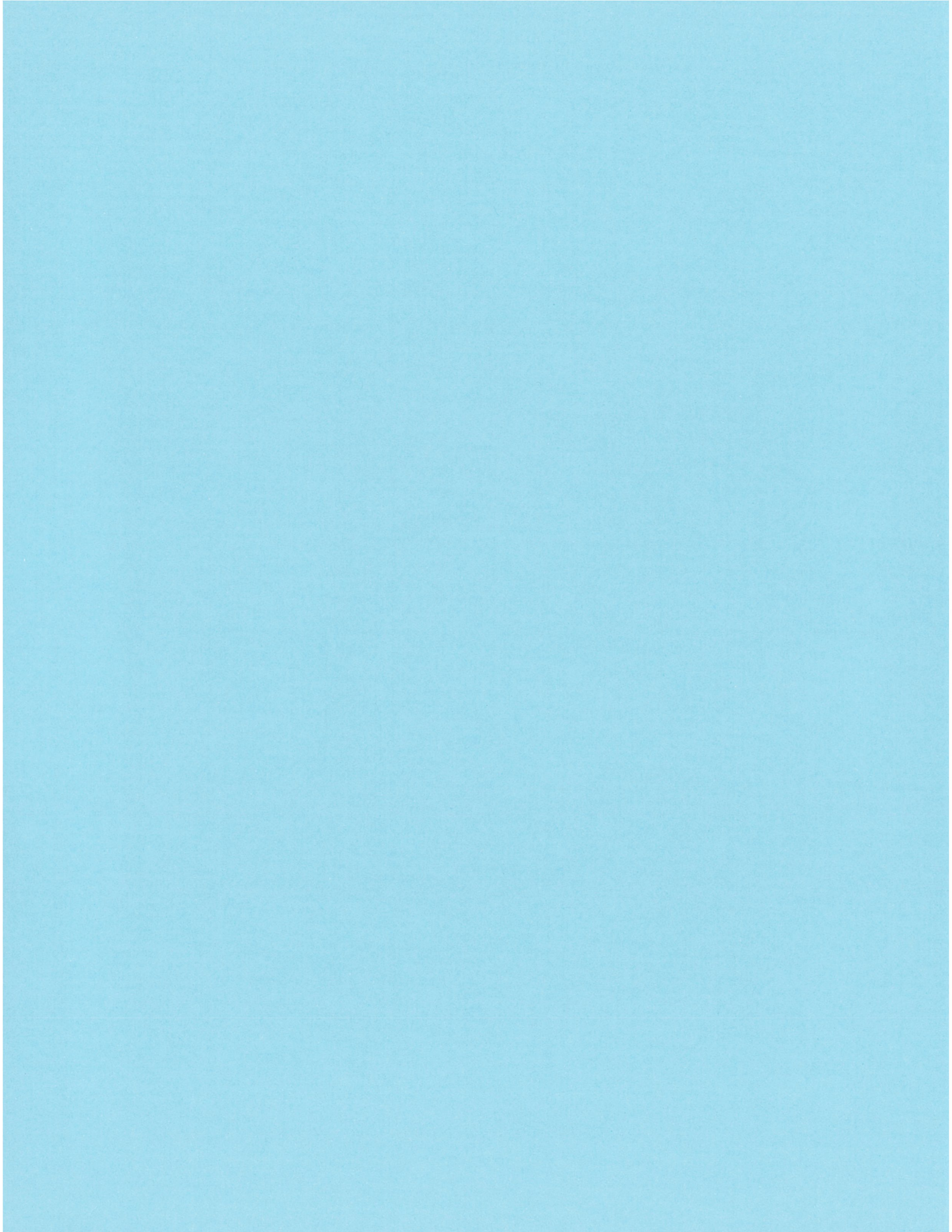
19 (D) expenses;

20 (E) attendance; and

21 (F) any other matter requested by the Commission.

- 1           (3) At the first Commission meeting held prior to September 1 each year, the BAC will  
2 provide to the Commission a report of its activities as they relate to the workplan approved by the  
3 Commission the previous year.  
4 (o) (No change.)

DRAFT



1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.300  
2 (Pull-Tab Bingo). The purpose of the proposed amendments is to remove an unnecessary  
3 provision (subsection (d)(3)) requiring detailed information to be provided in a packing slip inside  
4 each deal of pull-tab bingo tickets.

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

13           Alfonso D. Royal III, Director of the Charitable Bingo Operations Division, has determined  
14 that for each year of the first five years the proposed amendments will be in effect, the anticipated  
15 public benefit is reduced regulation of the manufacture of pull-tab bingo tickets.

16           Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
17 Government Growth Impact Statement for the proposed rule amendments. For each year of the  
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10 The Commission requests comments on the proposed amendments from any interested  
11 person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery  
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19 Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws  
20 under the Commission's jurisdiction.

21 This proposal is intended to implement the Texas Occupations Code, Chapter 2001.  
22 §402.300. Pull-Tab Bingo.

23 (a) – (c) (No change.)

1 (d) Manufacturing requirements.

2 (1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each  
3 deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or  
4 approximate location of any winning pull-tab bingo ticket can be determined in advance of opening  
5 the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or  
6 approximate location of any winning pull-tab bingo ticket be determined in advance of opening  
7 the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a  
8 light. Each manufacturer is subject to inspection by the Commission, its authorized representative,  
9 or designee.

10 (2) All winning pull-tab bingo tickets as identified on the payout schedule must be  
11 randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number  
12 in a deal regardless of the number of packages, boxes, or other containers in which the deal is  
13 packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not  
14 demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed  
15 in more than one box or container, no individual container may indicate that it includes a winner  
16 or contains a disproportionate share of winning or losing tickets.

17 ~~(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This~~  
18 ~~packing slip must substantiate the name of the manufacturer, the serial number for the specific~~  
19 ~~deal, the date the deal was packaged, and the name or other identification of the person who~~  
20 ~~packaged the deal.~~

21 (3)(4) Each deal's package, box, or other container shall be sealed at the manufacturer's  
22 factory with a seal including a warning to the purchaser that the deal may have been tampered with  
23 if the package, box, or other container was received by the purchaser with the seal broken.

1        ~~(4)(5)~~ Each deal's serial number shall be clearly and legibly placed on the outside of the  
2 deal's package, box or other container or be able to be viewed from the outside of the package, box  
3 or container.

4        ~~(5)(6)~~ A flare must accompany each deal.

5        ~~(6)(7)~~ The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this  
6 section shall be located on the outside of each deal's sealed package, box, or other container.

7        ~~(7)(8)~~ Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point  
8 into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must  
9 be of such construction as to guarantee that should the container be opened or tampered with, such  
10 tampering or opening would be easily discernible.

11        ~~(8)(9)~~ All high tier winning instant pull-tab bingo tickets must utilize a secondary form of  
12 winner verification.

13        ~~(9)(10)~~ Each individual pull-tab bingo ticket must be constructed so that, until opened by  
14 a player, it is substantially impossible, in the opinion of the Commission, to determine its  
15 concealed letter(s), number(s) or symbol(s).

16        ~~(10)(11)~~ No manufacturer may sell or otherwise provide to a distributor and no distributor  
17 may sell or otherwise provide to a licensed authorized organization of this state or for use in this  
18 state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total  
19 receipts if completely sold out.

20        ~~(11)(12)~~ A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall  
21 seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping  
22 material.

23        ~~(12)(13)~~ Pull-tab bingo tickets must:

1 (A) be constructed of cardboard and glued or otherwise securely sealed along all  
2 four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on  
3 the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the  
4 sides of a pull-tab bingo ticket;

5 (B) have letters, numbers or symbols that are concealed behind perforated window  
6 tab(s), and allow such letters, numbers or symbols to be revealed only after the player has  
7 physically removed the perforated window tab(s);

8 (C) prevent the determination of a winning or losing pull-tab bingo ticket by any  
9 means other than the physical removal of the perforated window tab(s) by the player;

10 (D) be designed so that the numbers and symbols are a minimum of  $2/32$  ( $4/64$ )  
11 inch from the dye-cut window perforations;

12 (E) be designed so that the lines or arrows that identify the winning symbol  
13 combinations will be a minimum of  $5/32$  inch from the open edge farthest from the hinge of the  
14 dye-cut window perforations;

15 (F) be designed so that highlighted "pay-code" designations that identify the  
16 winning symbol combinations will be a minimum of  $3.5/32$  inch from the dye-cut window  
17 perforations;

18 (G) be designed so that secondary winner protection codes appear in the left margin  
19 of the ticket, unless the secondary winner protection codes are randomly generated serial number-  
20 type winner protection codes. Randomly generated serial number-type winner protection codes  
21 will be randomly located in either the left or middle column of symbols and will be designed so  
22 that the numbers are a minimum of  $3.5/32$  inch from the dye-cut window perforations. Any colored



1 line or bar or background used to highlight the winner protection code will be a minimum 3.5/32  
2 (7/64) inch from the dye-cut window perforations;

3 (H) have the Commission's seal placed on all pull-tab bingo tickets by only a  
4 licensed manufacturer; and

5 (I) be designed so that the name of the manufacturer or its distinctive logo, form  
6 number and serial number unique to the deal, name of the game, price of the ticket, and the payout  
7 structure remain when the letters, numbers, and symbols are revealed.

8 ~~(13)~~(14) Wheels must be submitted to the Commission for approval. As a part of the  
9 approval process, the following requirements must be demonstrated to the satisfaction of the  
10 Commission.

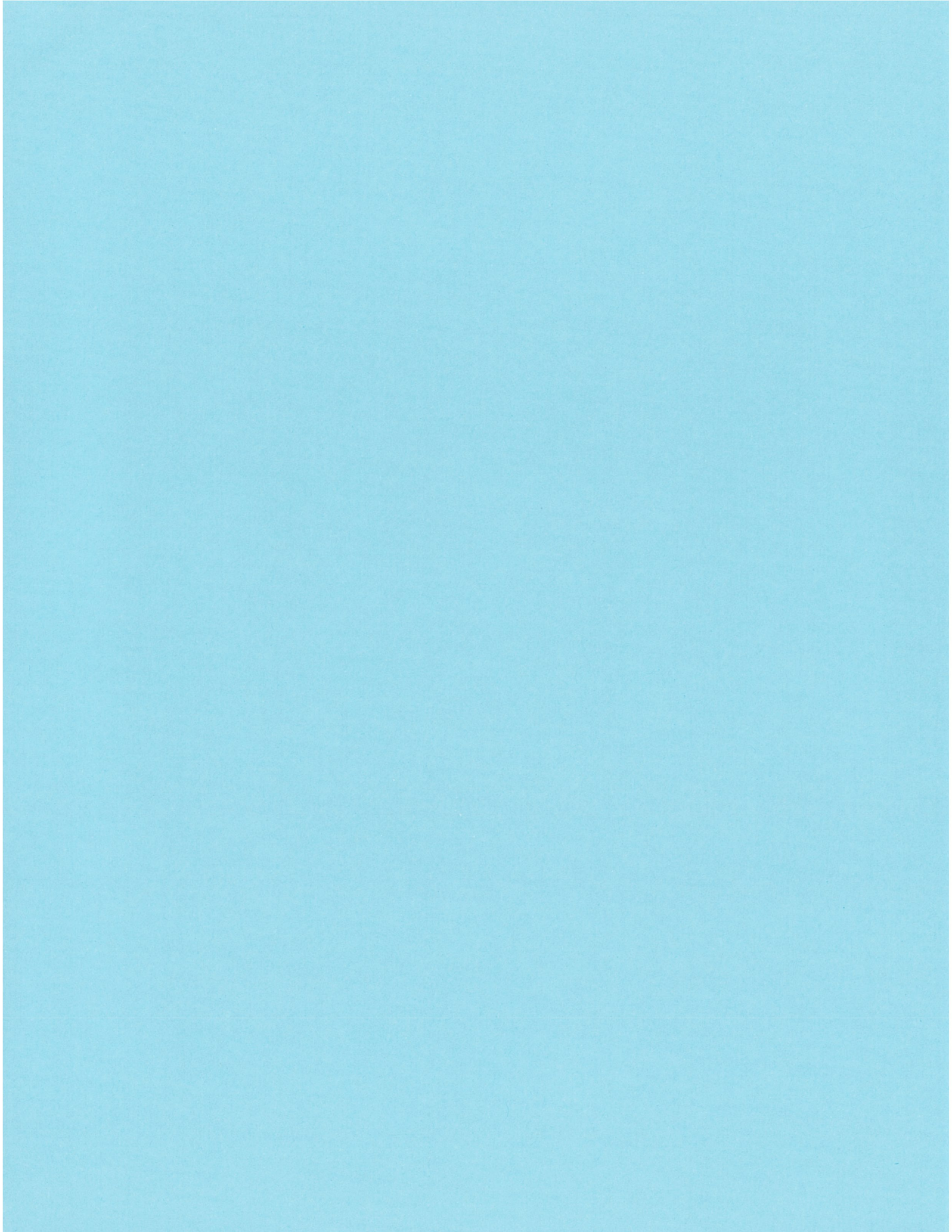
11 (A) wheels must be able to spin at least four times with reasonable effort;

12 (B) wheels must only contain the same number or symbols as represented on the  
13 event ticket; and

14 (C) locking mechanisms must be installed on wheel(s) to prevent play outside the  
15 licensed authorized organization's licensed time(s).

16 ~~(14)~~(15) A manufacturer must include with each pull-tab bingo ticket deal instructions for  
17 how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act  
18 and this chapter. The instructions are not required to cover every potential method of playing the  
19 pull-tab bingo ticket deal.

20 (e) – (h) (No change.)



1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.402  
2 (Registry of Bingo Workers). The purpose of the proposed amendments is to (1) remove a  
3 requirement that a provisional employee of a licensed authorized organization (bingo conductor)  
4 must indicate the playing location(s) where they are provisionally employed on the Application  
5 for Registry of Approved Bingo Workers (Bingo Registry) form submitted to the Commission;  
6 and (2) extend the length of time a provisional employee who is not a resident of Texas may work  
7 without being listed on the Bingo Registry from 45 days to 75 days. A provisional employee is an  
8 individual who is employed by a bingo conductor as an operator, manager, cashier, usher, caller,  
9 or salesperson while awaiting the results of a criminal history background check, whether paid or  
10 not. Except during the time period allowed for provisional employees awaiting the result of a  
11 background check, all bingo workers must be listed on the Bingo Registry.

12           Kathy Pyka, Controller, has determined that for each year of the first five years the  
13 amendments will be in effect, there will be no fiscal impact for state or local governments as a  
14 result of the proposed amendments. There will be no adverse effect on small businesses or rural  
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bingo conductor employers while awaiting the results of such an applicant's criminal history background check.

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(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

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(8) The proposed amendments do not positively or adversely affect this state's economy.

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6 under the Commission's jurisdiction.

7 This proposal is intended to implement the Texas Occupations Code, Chapter 2001.  
8 §402.402. Registry of Bingo Workers.

9 (a) – (q) (No change.)

10 (r) A provisional employee must:

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

13 ~~(1)(2) immediately stop working:~~

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

16 (B) after ~~7545~~ days if the individual is not listed on the registry, not a resident of  
17 this state, and submitted a fingerprint card for a background investigation. If the fingerprint cards  
18 are returned by the law enforcement agency as unclassifiable, the Commission will notify the  
19 individual, and the individual may continue to be provisionally employed by submitting a written  
20 request and new fingerprint cards within 14 days of the notification.

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

- 1        ~~(2)(3)~~ wear an identification card while on duty with the registry applicant's name,
- 2        "Provisional Employment" as the unique registration number, and the submission date of the
- 3        registry application as the expiration date.
- 4        (s) (No change.)

DRAFT