






# INTEROFFICE MEMO

Gary Grief, Executive Director      Michael P. Farrell, Charitable Bingo Operations Director

**To:** J. Winston Krause, Chairman  
Mark A. Franz, Commissioner  
Robert Rivera, Commissioner

**From:** Tyler Vance, Assistant General Counsel 

**Date:** June 6, 2019

**Re:** Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §402.403 (Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises)

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Attached is a draft rule prepared for submission to the *Texas Register* to adopt an amendment to the referenced bingo rule with changes to the proposed text as published in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2135) (also attached).

The amendment establishes a limit to the length of time that a lessor of bingo premises may defer rent payments owed by a licensed bingo conductor before such deferral is considered a prohibited loan rendering the lessor ineligible for licensure. The limit is 120 days from the date of the bingo occasion for which the rent is attributed. The Commission is adopting the amendment in response to a recommendation from the Bingo Advisory Committee.

Fort Worth Bookkeeping Inc. and River City Bingo each provided comments at the May 8, 2019 public comment hearing. Sharon Ives represented Fort Worth Bookkeeping Inc. and requested clarification on the effect of the rule amendment on quarterly billing and debt forgiveness. River City Bingo, represented by Stephen Fenoglio, provided oral and written comments in support of the proposed amendment, but requested that a portion of the proposed language relating to payments for utilities, taxes, and insurance be removed due to the variety of billing practices for these items. The Commission made changes to the rule amendment based on River City Bingo's comments. The Commission also received a written comment from the Texas Veterans of Foreign Wars ("Texas VFW") opposing the amendment and asking that lessors be allowed to make payment plans for organizations that are behind in payments. The Commission disagrees with this comment because a payment plan is essentially a prohibited loan.

Recommendation: Staff recommends that the Commission adopt the amendment to the bingo rule.

1           The Texas Lottery Commission (Commission) adopts an amendment to 16 TAC §402.403  
2 (Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises) with changes to the  
3 proposed text as published in the April 26, 2019 issue of the *Texas Register* (44 TexReg 2135).  
4 The purpose of the amendment is to establish a limit to the length of time that a lessor of a bingo  
5 premises may defer rent payments and expenses owed by a licensed bingo conductor before such  
6 deferral is considered a prohibited loan rendering the lessor ineligible for licensure. The  
7 Commission is adopting the amendment in response to a recommendation from the Bingo  
8 Advisory Committee.

9           A public comment hearing was held on Wednesday, May 8, 2019, at 10:00 a.m., at 611 E.  
10 6th Street, Austin, Texas 78701. Sharon Ives represented Fort Worth Bookkeeping Inc. and  
11 requested clarification on the effect of the rule amendment on quarterly billing and debt  
12 forgiveness. River City Bingo, represented by Stephen Fenoglio, provided oral and written  
13 comments in support of the proposed amendment at the hearing, but requested that a portion of the  
14 added language be removed. The Commission also received a written comment from the Texas  
15 Veterans of Foreign Wars (“Texas VFW”).

16           COMMENT: Sharon Ives asked for clarification as to how the rule would impact lessors  
17 that billed on a quarterly basis. She also asked for the procedures on debt forgiveness.

18           RESPONSE: The rule amendment will not impact lessors that bill quarterly, because that  
19 is on a 90 day cycle, which leaves another 30 days to collect payment within the time allowed by  
20 the rule. As for forgiving debts, the Charitable Bingo Operations Director stated that CBOD will  
21 accept letters of forgiveness as proof of debt forgiveness.

22           COMMENT: River City Bingo commented that it supports the amendment to limit the  
23 amount of back rent that charities are obligated to pay to commercial lessors, but expressed concern

1 that the rule would prohibit standard industry billing practices. Specifically, the second part of the  
2 proposed second sentence in subparagraph (b)(4), which reads, “and any payments from any  
3 accounting unit or any authorized organization for insurance, utilities, or taxes more than 120 days  
4 after the date the lessor received an invoice for the charge” would “prohibit a very normal business  
5 practice of a landlord charging triple net expenses . . . whereby the landlord bills these expenses  
6 over a twelve-month period.” River City Bingo requested that portion of the proposed language be  
7 removed.

8 RESPONSE: The rule amendment is being modified to eliminate the provisions related to  
9 utilities, taxes, and insurance due to the variety of billing practices in these areas. The rule will  
10 only prohibit rental payments made more than 120 days after the date of an occasion.

11 COMMENT: Texas VFW commented that it opposes the proposed amendment because it  
12 encourages the use of litigation, which goes against public policy and the concept of judicial  
13 economy and efficiency. Texas VFW believes that organizations and lessors should be allowed to  
14 resolve debt situations between themselves without the need for lawsuits. Additionally, Texas  
15 VFW believes that the rule could have the effect of organizations being kicked out of bingo halls,  
16 which would disrupt their bingo activities. Texas VFW asks that lessors be allowed to make  
17 payment plans for organizations that are behind in payments.

18 RESPONSE: The Commission disagrees with Texas VFW’s request to allow payment  
19 plans because a payment plan is in essence a loan that would render an entity ineligible for  
20 licensure as a commercial lessor. Further, allowing a licensed authorized organization to remain  
21 in debt to a commercial lessor for an extended period of time would tend to mask the financial  
22 status of the debtor organization for the purposes of assessing the organization’s ability to generate  
23 positive net proceeds from the conduct of bingo, as required by law. The Commission recognizes

1 that some lessors may choose to litigate to collect rent debts owed to them and that some  
2 organizations could lose their playing location, but any public policy in favor of discouraging  
3 litigation to collect delinquent rent is outweighed by the public's interest in preventing charitable  
4 organizations from becoming indebted to commercial lessors and ensuring an organization's  
5 compliance with the net proceeds requirement.

6 The rule amendment is adopted under the Texas Occupations Code §2001.054, which  
7 authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and  
8 the Texas Government Code §467.102, which authorizes the Commission to adopt rules for the  
9 laws under the Commission's jurisdiction.

10 The adopted amendment implements the Texas Occupations Code, Chapter 2001.  
11 §402.403. Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises.

12 (a) License for Conduct of Bingo.

13 (1) A conductor may hold only one regular license to conduct bingo occasions. The license  
14 is valid for only the specific days, times, and location indicated on the face of the license.

15 (2) A licensed authorized organization will be licensed to conduct bingo for specific day(s)  
16 of the week at specific time(s) at a specific location and no other license may conflict with those  
17 day(s) and time(s).

18 (b) License to lease bingo premises.

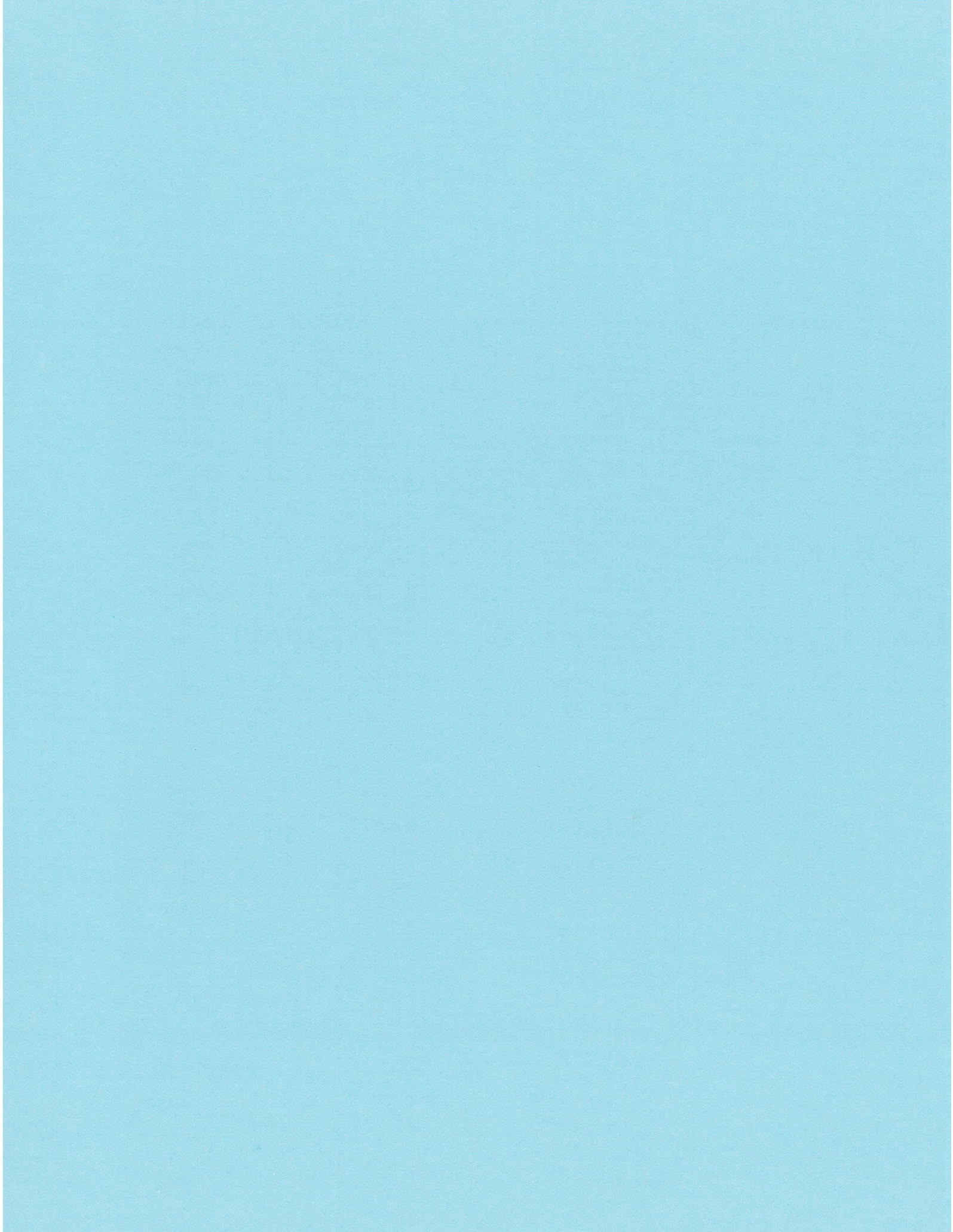
19 (1) Each location to be leased as a bingo premises must be separately licensed pursuant to  
20 separate applications.

21 (2) Except as required by Occupations Code, §2001.152(a), the Commission may not issue  
22 more than one license to lease bingo premises for any one location.

1 (3) When more organizations apply to play bingo at the premises of a commercial lessor  
2 than can be licensed for the premises, the Commission will process only the number of applications  
3 for which there are openings with the commercial lessor. The Commission will process the  
4 applications in the order in which they are received. Additional applications in excess of the  
5 number that may be licensed for the commercial lessor's premises will be denied.

6 (4) The commission may not issue a commercial lessor license to or renew the license of a  
7 person who has loaned money to an authorized organization. A loan shall include a commercial  
8 lessor's collection or acceptance of any rental payments from any accounting unit or any  
9 authorized organization more than 120 days from the date of the occasion for which the rent is  
10 attributed. This subsection is intended to prohibit a lessor from loaning money to a unit or  
11 organization by deferring their debts for more than 120 days to allow the unit or organization to  
12 demonstrate higher net proceeds than they could demonstrate if they had paid the debt. If debts are  
13 not collected within 120 days, the lessor may forgive the debt or pursue collection through a formal  
14 legal process. This rule does not apply to any payments collected or accepted by the lessor pursuant  
15 to a court order.





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

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule does not create a new regulation.

6. The proposed rule does expand, limit, or repeal an existing regulation. The proposed rule expands the scope of an existing regulation to allow additional licensees to qualify as examination proctors. The proposed rule reduces the number of years a licensee must have held his or her license before proctoring and reduces the number of practical examinations a licensee must observe before becoming a proctor. Serving as a proctor is completely voluntary.

7. The proposed rule does increase the number of individuals subject to the rule's applicability. The proposed rule will increase the number of people who may serve as a proctor through the change in experience requirements. Serving as a proctor is completely voluntary.

8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposal may be submitted to Dalma Sotero, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, Chapters 51 and 402, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 402. No other statutes, articles, or codes are affected by the proposal.

#### §112.25. Examination Proctors.

(a) The practical examination must be administered by one or more qualified proctors selected and assigned by the department.

(b) Qualifications for Examination Proctor.

(1) A proctor must be licensed in good standing as a hearing instrument fitter and dispenser under the Act.

(2) A proctor must have held the license for at least two [three] years prior to the examination date.

(3) A proctor must have observed at least three [five] full practical examinations and meet any other proctor training requirements as prescribed by the Department or its designee [examination sessions] prior to serving as a proctor.

(4) Disciplinary actions or other actions that may disqualify a license holder from serving as a proctor are:

(A) suspension or probated suspension under this chapter;

(B) any action requiring supervision by another person licensed under this chapter; or

(C) an administrative penalty or reprimand under this chapter within three years prior to the examination 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 April 12, 2019.

TRD-201901099

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 26, 2019

For further information, please call: (512) 463-8179



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

#### SUBCHAPTER D. LICENSING REQUIREMENTS

##### 16 TAC §402.403

The Texas Lottery Commission (Commission) proposes an amendment to 16 TAC §402.403 (Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises). The purpose of the proposed amendment is to establish a limit to the length of time that a lessor of bingo premises may defer rent payments owed by a licensed bingo conductor before such deferral is considered a prohibited loan rendering the lessor ineligible for licensure. The Commission is proposing the amendment in response to a recommendation from the Bingo Advisory Committee.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendment. 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 amendment, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment 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).

Michael P. Farrell, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years



the proposed amendment will be in effect, the anticipated public benefit is clearer guidance to the regulated community on agency policy.

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

- (1) The proposed amendment does not create or eliminate a government program.
- (2) Implementation of the proposed amendment does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendment does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendment does not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendment does not create a new regulation.
- (6) The proposed amendment does not expand or limit an existing regulation.
- (7) The proposed amendment does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendment does not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendment from any interested person. Comments may be submitted to Tyler Vance, 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. Comments must be received within thirty (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 May 8, 2019, at 611 E. 6th Street, Austin, Texas 78701.

The amendment is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

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

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

- (a) (No change.)
- (b) License to lease bingo premises.
  - (1) Each location to be leased as a bingo premises must be separately licensed pursuant to separate applications.
  - (2) Except as required by Occupations Code, §2001.152(a), the Commission may not issue more than one license to lease bingo premises for any one location.
  - (3) When more organizations apply to play bingo at the premises of a commercial lessor than can be licensed for the premises, the Commission will process only the number of applications for which there are openings with the commercial lessor. The Commission will process the applications in the order in which they are received. Addi-

tional applications in excess of the number that may be licensed for the commercial lessor's premises will be denied.

(4) The commission may not issue a commercial lessor license to or renew the license of a person who has loaned money to an authorized organization. A loan shall include a commercial lessor's collection or acceptance of any rental payments from any accounting unit or any authorized organization more than 120 days from the date of the occasion for which the rent is attributed, and any payments from any accounting unit or any authorized organization for insurance, utilities, or taxes more than 120 days after the date the lessor received an invoice for the charge. This subsection is intended to prohibit a lessor from loaning money to a unit or organization by deferring their debts for more than 120 days to allow the unit or organization to demonstrate higher net proceeds than they could demonstrate if they had paid the debt. If payments are not collected within 120 days, the lessor may forgive the debt or pursue collection through a formal legal process. This rule does not apply to any payments collected or accepted by the lessor pursuant to a court order.

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 April 12, 2019.

TRD-201901095

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: May 26, 2019

For further information, please call: (512) 344-5392

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER J. FINANCIAL AID ADVISORY COMMITTEE

##### 19 TAC §1.152

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 1, Agency Administration, §1.152 concerning the abolishment date of the Financial Aid Advisory Committee. The intent of the amendment is to continue this advisory committee until October 31, 2021. The Committee provides the Board with advice and recommendations regarding the development, implementation, and evaluation of state financial aid programs for college students and assists staff in the development of training materials for use by the Center for Financial Aid Information. Specifically, the amendment to §1.152 replaces the previous abolishment date of October 31, 2017 with the Coordinating Board's approved date of October 31, 2021. The new abolishment date was approved by the Coordinating Board on July 27, 2017.

Dr. Charles W. Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years this section is in effect there will be no additional estimated cost for state or local government as a result of amending this section.