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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS LOTTERY COMMISSION
AUSTIN, TEXAS

PUBLIC HEARING TO RECEIVE COMMENTS REGARDING PROPOSED AMENDMENTS TO 16 TAC §§402.200 (GENERAL RESTRICTIONS ON THE CONDUCT OF BINGO), 402.300 (PULL-TAB BINGO), 402.301 (BINGO CARD/PAPER), 402.400 (GENERAL LICENSING PROVISIONS), 402.401 (TEMPORARY LICENSE), 402.404 (LICENSE CLASSES AND FEES), 402.408 (DESIGNATION OF MEMBERS), 402.420 (QUALIFICATIONS AND REQUIREMENTS FOR CONDUCTOR'S LICENSE), 402.450 (REQUEST FOR WAIVER), 402.451 (OPERATING CAPITAL), 402.502 (CHARITABLE USE OF NET PROCEEDS RECORDKEEPING), 402.503 (BINGO GIFT CERTIFICATES), 402.511 (REQUIRED INVENTORY RECORDS), 402.601 (INTEREST ON DELINQUENT TAX), 402.602 (WAIVER OF PENALTY, SETTLEMENT OF PRIZE FEES, RENTAL TAX, PENALTY AND/OR INTEREST), 402.700 (DENIALS; SUSPENSIONS; REVOCATIONS; HEARINGS), 402.702 (DISQUALIFYING CONVICTIONS), AND 402.703 (AUDIT POLICY)

SEPTEMBER 9, 2020

9:00 a.m.

AT

TEXAS LOTTERY COMMISSION
611 East 6th Street
Austin, Texas 78701

VIA ZOOM WEBINAR

Proceedings reported by electronic sound recording; transcript prepared by Verbatim Reporting & Transcription LLC.

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APPEARANCES

ASSISTANT GENERAL COUNSEL: Tyler Vance

CHARITABLE BINGO OPERATIONS
DIVISION DIRECTOR: Thomas Hanson

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MR. VANCE: All right. Let's get this started. We're on the record here. It is 9:00 a.m. on September 9th, 2020. My name is Tyler Vance. I'm Assistant General Counsel at the Texas Lottery Commission, and with me today on this panel is Tom Hanson, the Director of the Charitable Bingo Operations Division of the Texas Lottery Commission. And the purpose of this hearing today is to receive public comments on proposed rules 402.200, 300, 301, 400, 401, 404, 408, 420, 450, 451, 502, 503, 511, 601, 602, 700, 702, and 703, all of which relate to bingo and again, those are all from Chapter 402 of the Texas Administrative Rules.

In addition to this public comment hearing, the Commission is accepting written public comments through September 21st via mail, email and fax, and these proposed rules were published in the August 21st edition of the Texas Register where you can find all the specific contact points if you want to submit a written comment after this meeting. And those contact points are also available on the Commission's web page if you search under the August 6th, 2020 Commission meeting.

These proposed rule amendments are a result of the Commission's recent rule review that was conducted in accordance with Texas Government Code 2001.039, as well as

1 several stakeholder meetings that were conducted between
2 Commission staff, the Bingo Advisory Committee, and various
3 representatives of the bingo community. The amendments
4 include updates, clarifications of certain terms, and they
5 remove references and citations that are no longer
6 applicable.

7 The proposal implements procedural guidelines
8 related to temporary suspensions that are required by the
9 Bingo Enabling Act and it implements procedural changes for
10 processing incomplete license applications in order to
11 conserve limited staff resources. The proposed amendments
12 remove recordkeeping requirements and other restrictions that
13 were found to be unnecessary to the agency's purpose of
14 ensuring that bingo is conducted fairly and that the proceeds
15 go to charities.

16 Finally, the proposal allows organizations to
17 issue electronic gift certificates, to accept and award
18 donated prizes, and to conduct a bingo occasion using a
19 temporary license without having to display verification from
20 the Commission that it received notification of the occasion.
21 And we believe these are all permissible changes that the
22 bingo industry believes will help generate proceeds for
23 charities.

24 Prior to this meeting, in accordance with the
25 notice of the meeting, I received three requests to make a

1 public comment. Anyone else who did not submit a request who
2 wishes to make a comment at this hearing should communicate
3 that request through Zoom at anytime by either using the
4 raise hand function or through sending me a message through
5 the chat. And if you do that, I'll go ahead -- I'll get to
6 you after the three scheduled speakers are done.

7 The three requests to speak today that I
8 received, one is from Steve Bresnen representing the Bingo
9 Interest Group, one from Kim Kiplin representing the
10 Department of Texas, Veterans of Foreign Wars, and one from
11 Tom Stewart, Executive Director of Texas Charity Advocates.

12 And so with that, we'll get started first, I'm
13 going to bring up Steve Bresnen first.

14 MR. BRESNEN: Thank you, Tyler. Can you hear
15 me?

16 MR. VANCE: I sure can. Go ahead, Steve.

17 MR. BRESNEN: All right. Thank you all so
18 much. First, I want to thank you and particularly Tom
19 Hanson, for the way you've conducted the rules review, been
20 very methodical. Tom, we know this is your first go-around
21 as head of the Division and there's a lot going on here, and
22 so we very much appreciate the fact that you've given ample
23 opportunity for participation and I think you've had your ear
24 to the ground listening to the industry, particularly in this
25 extraordinarily difficult time for everybody in Texas and

1 including charitable bingo.

2 In general, the Bingo Interest Group supports
3 the rules as proposed with one exception, and that's Rule
4 402.450 for which we are -- I'm going to talk briefly about
5 some amendments to that rule that we have suggested.

6 We are particularly supportive of the
7 elimination of maintaining a game schedule, 402.200(i)(4).
8 We are supportive of allowing temporary licenses on demand,
9 402.401, allowing a designated member to renew or print
10 licenses online, allowing use of electronic gift
11 certificates, 402.503, and the audit completion requirements
12 of 402.703. We're especially appreciative for those items
13 that I have just enumerated to be addressed.

14 We -- on 402.700, we would like to see a
15 little legislative intent put in the register on final
16 adoption. The 402.700(b) allows a temporary suspension where
17 there is conviction of a gambling offense or fraud, but the
18 rule doesn't say by whom, whether that's a member of the
19 board of a charitable organization, a bingo worker, a hall
20 manager, registered agent, and we would like -- and we
21 understand in the past that has generally referred to people
22 on the board and there's been an opportunity to move those
23 people off or anybody else who may have -- be on the
24 licenses, move those people out of the operation before the
25 temporary suspension. We think that's been the past practice

1 and we would like to see some reference to that to narrow
2 that down a little bit in the -- so just as a matter of
3 legislative intent in the register on final adoption.

4 With respect to Rule 402.450, in reviewing
5 this history of this rule and its implementation, it appears
6 that grants or denials has been sort of all over the block
7 and we are making proposals to narrow -- nail down a little
8 bit more about what goes in the application for a waiver from
9 the net proceeds requirement to clean up the rule, there are
10 some redundancies in it that don't really make sense, and the
11 rule fails to give really concrete guidance about what should
12 go into an application.

13 So on behalf of the Bingo Interest Group, I
14 have submitted two documents that I would request that you
15 include in the public comments. Because I submitted them
16 twice, there were some minor changes, the documents that you
17 should have are titled "Proposed Changes to §402.450
18 Recommended by the Bingo Interest Group," that's the actual
19 redlining of the current rule, and the second -- that's dated
20 September 3rd, 2020. And an explanation of the proposed
21 changes dated September 4th, 2020, titled "Explanation of
22 Proposed Changes to §402.450 Recommended by the Bingo
23 Interest Group."

24 Rather than go line by line through those, I
25 would -- by the way, these have been shared with all of the

1 major bingo organizations; the Texas Charity Advocates, to
2 Kim Kiplin who has multiple clients, Steve Fenoglio has
3 signed off on these. I sent them to the Conservative Texans
4 for Charitable Bingo, I've not heard back from them at this
5 point in time. Rather than speak for those groups though, I
6 would actively and openly solicit their support for these
7 proposed changes.

8 I want to call attention to a couple of items
9 and just for ease of discussion, I'll refer to the
10 explanation of proposed changes on page 2, I have made it
11 clear in the second discussion, page 2, line 22 through page
12 3, line 3, that most of that's a reorganization. But on page
13 3, line 3, we made clear that the list of information types
14 that the Commission can consider is non-exclusive and
15 preserves both prior practice and agency discretion.

16 Under the existing rule, they don't use the
17 word including and it could be read to be a finite list and
18 we're trying to preserve the agency's discretion and also
19 leave room for some of the prior practice.

20 The second specific comment in our
21 recommendation, page 3, lines 4 through 8, would establish a
22 presumption of -- for purposes of legislative intent. I
23 think the language clearly makes that a rebuttable
24 presumption, but if it's your -- if it's an organization's
25 first time within a three year period prior to the

1 application to request a waiver, that there's a presumption
2 in favor of it, provided that the application is complete and
3 detailed enough to allow the agency to determine whether it's
4 in the organization's capability to actually carry out the
5 plan.

6 Partly that presumption is designed to have
7 people in bingo proposing things that they believe are
8 workable and giving them the benefit of the doubt as opposed
9 to the agency having the ability to arbitrarily determine
10 that well, we just don't think you could do that. You could
11 -- the agency could still make that determination, but you'd
12 have a little more of an uphill climb, assuming it wasn't a
13 repeat waiver requester.

14 The language also puts applicants on notice
15 that the organizations that attempt to unreasonably obtain
16 waivers repeatedly will not have the benefit of that
17 presumption.

18 Unless there are any questions about that,
19 that concludes my comments. I very much appreciate you
20 making it easy to participate at this particular time. I
21 know y'all's jobs are not made any easier by the fact that we
22 can't all sit down in the same room and chat and go over
23 these things in detail. So unless you have any questions,
24 that concludes my remarks and again, I very much appreciate
25 the staff and everything you're doing to help charitable

1 bingo.

2 MR. VANCE: Thank you, Steve. I don't have
3 any questions. Tom, do you?

4 MR. HANSON: I do not. And I want to thank
5 you for your commentary, sir.

6 MR. BRESNEN: Thank y'all. I'm going to mute
7 myself and listen to the rest.

8 MR. VANCE: All right. Thanks, Steve.

9 Next scheduled speaker is Kim Kiplin
10 representing Department of Texas, Veterans of Foreign Wars.
11 And she's already unmuted, so Kim, go ahead.

12 MS. KIPLIN: Good morning. My name's Kimberly
13 Kiplin. For the record, I'm an attorney here in Austin. I am
14 commenting today on behalf of the Department of Texas,
15 Veterans of Foreign Wars.

16 We did participate in the 2019-2020 rule
17 review process and the meetings with the stakeholders and
18 agency staff. Really appreciated the opportunity to provide
19 comments on that rule review and to participate in those
20 meetings.

21 In my view, the process was extremely
22 collaborative and the proposed amendments for the most part
23 are a result of that process. And just to echo a comment
24 that Mr. Bresnen made to Director Tom Hanson, I want to
25 really extend appreciation to you for how you've handled this

1 process and how you've been receptive and open. The same to
2 you, Tyler. It's just been a really terrific opportunity to
3 exchange ideas and views and I fully expect that to continue
4 as we go forward.

5 We do support the proposed rulemaking in the
6 main. We also support the proposed changes to Rule 402.450,
7 the waiver request rule recommended by the Bingo Interest
8 Group, for the reasons that were stated in the document
9 that's titled "Explanation of Proposed Changes."

10 I do want to go on record, we are not
11 supportive of amending 402.702, the disqualifying convictions
12 to include in its entirety the Penal Code Chapter 22,
13 Assaultive Offenses, to the list of offenses that directly
14 relate to the fitness of a new or renewal application.

15 Some of the assaults in Chapter 22 are Class C
16 misdemeanors. Arguably that's -- that could probably be
17 carved out already by other language in the rule, but just
18 wanted to highlight that. We are concerned that a broad
19 application of Chapter 22 will have an impact on combat
20 veterans that are now entering civilian life where the --
21 because we know and you all know, I put these comments on the
22 record at the August 6th Commission meeting, but the veteran
23 unemployment rate is very high. We have veterans who may be
24 struggling with PTSD or depression, maybe they've acted out
25 inappropriately and we discussed that, I discussed that at

1 the Commission meeting, gotten into some kind of fight; maybe
2 in a bar fight or something along those lines.

3 We just really want these young men and women
4 to be able to work in charitable bingo. These are really
5 focused on workers, on the bingo registry worker. These are
6 low paying jobs as they are, but they do provide a bit of
7 income for their families and they're useful to the other
8 veterans in developing community. We really think being a
9 part of being able to work bingo at these local posts helps
10 them get into a community, and there are rules that they know
11 they can follow.

12 So I'd like for you to consider that comment
13 regarding just a broad brush on including Chapter 22 in its
14 entirety.

15 To some extent, the reason I'm focused on that
16 end -- is because I think of the current process that may be
17 in place in terms of these criminal history popping up. And
18 what I'm thinking is happening and you all can correct me if
19 I'm wrong, is that you'll get an applicant to be a worker in
20 the bingo registry and now we've got an assault that's
21 popping up and then the next thing they get is a notice of
22 the -- a denial to being placed on that bingo worker
23 registry. Or if they're current, then maybe a removal.

24 And what I'd like to focus on a little bit is
25 the process because I do understand that there's a difference

1 between directly -- the Subsection (f) in terms of whether a
2 criminal conviction relates to the duties and that's the one
3 I'm focused on in trying to keep Chapter 22 in its entirety
4 not involved, but it goes back to -- for me, and I'm focused
5 on the rule, proposed amendments to the rule, it's Subsection
6 (h), and then in this one, the reason I'm focused on this is
7 because I want to make sure that the agency's not kind of
8 jumping the gun so to speak in sending out these notices that
9 initiate some enforcement proceeding.

10 I would suggest if it's not happening -- and I
11 don't think it is, but I could be wrong, I would suggest that
12 instead of sending out these notices that are initiating this
13 enforcement proceeding, under Subsection (h), simply ask the
14 questions. Because in that it says, if the commission
15 determines that the applicant has a criminal conviction
16 directly related to the duties and responsibilities of the
17 license occupation, and if you include assault, Chapter 22
18 assault, in the preceding section, Subsection (f), then
19 you'll have determined that. But then it says the Commission
20 shall consider the following in determining whether to take
21 an action against the applicant.

22 And so, what I'd like to see maybe is a
23 different order of the process, where if there -- this pops
24 up on the background check, the criminal history check,
25 instead of initiating the enforcement action and beginning

1 that whole process, simply request additional information to
2 be able to make the determination on whether there should be
3 an action against the applicant.

4 I think -- in the past it's been my experience
5 what's happened is the enforcement action is initiated and
6 then even though the -- at the staff level the staff has
7 determined that the -- it's not necessarily quote, a
8 disqualifying conviction, to where it's a total denial, then
9 there's this whole agreed order process. And what I'd like
10 to suggest is maybe revamping that.

11 So appreciate you all listening to me on that
12 particular aspect. I know I've probably been a little bit
13 tedious, but this really is important to the VFW, this issue
14 of a broad brush on Chapter 22.

15 With that, I appreciate the opportunity to
16 provide comment today. Really appreciate the ability and the
17 flexibility to be able to have these hearings proceed via
18 Zoom. In my view, this is the third time I've been a -- I
19 think a third time with the Lottery Commission, and I think
20 it's working really well.

21 I'm happy to answer any questions that you
22 have and I really appreciate your time this morning.

23 MR. VANCE: All right. Thank you, Kim. I'll
24 just comment on the -- kind of the application process. I
25 think what we do is kind of a hybrid of what you would prefer

1 and what you think that we do, and so that's -- when we get
2 an application with a criminal background, with a conviction
3 that's listed under a directly related offenses, we send them
4 a notice of proposed denial, and that lists out why we're
5 proposing to deny their application, and then it also
6 includes a reference to that Section (h) where it provides
7 them with the mitigating information that we have to
8 consider, should they provide that information, and then it
9 gives them the opportunity at the end, it gives them 30 days
10 to provide more information that may mitigate the case such
11 as letters of recommendation is the typical one, and then it
12 gives them the opportunity also to request a SOAH hearing if
13 they'd like.

14 So you know, that's -- I think the agency
15 feels that's probably the most efficient process on both ends
16 rather than ask for those things up-front, and that just adds
17 another 30 days to every application with a criminal
18 background. So we present all that information to them at
19 the time that we see it, we inform them what we intend to do,
20 but give them the opportunity to provide any mitigating
21 evidence. And then if that mitigating evidence comes in,
22 then we move typically into the agreed order process.

23 But you and I can of course speak to that
24 privately as long as you'd like, so with the hearing in mind
25 here, I'll just ask Tom, do you have any questions for Kim?

1 MR. HANSON: No, I will thank you, Kim, for
2 your input and I appreciate your involvement in this process.
3 Thank you.

4 MS. KIPLIN: Thank you. And Tyler, I probably
5 will want to have a side conversation with you regarding the
6 process.

7 MR. VANCE: Sure.

8 MS. KIPLIN: So I appreciate your willingness
9 to do that. And with that, I'm -- I will conclude my
10 remarks.

11 MR. VANCE: All right. Thank you very much.

12 Next up is Tom Stewart, Executive Director of
13 Texas Charity Advocates. And Tom is unmuted, so go ahead,
14 Tom.

15 MR. STEWART: Thank you, Tyler. If you guys
16 hear some lovely clarinet music, we've got a little home
17 schooling going on right now. I apologize if that is any
18 interference.

19 Good morning. My name's Tom Stewart, I'm here
20 today representing the 450 plus members of Texas Charity
21 Advocates. Almost 90 percent of our members are conductors
22 of charitable bingo.

23 TCA generally supports the proposed rule
24 changes. Specifically, we're very supportive of the
25 following modifications:

1 The elimination of maintaining the game
2 schedule, §402.200(i)(4), allowing temporary licenses on
3 demand, §402.401, allowing a designated member to renew or
4 print licenses online, allowing the use of electronic gift
5 certificates, §402.503, and the language around audits being
6 completed within a year of the entrance conference, §402.703.

7 In addition, as you know, COVID-19 pandemic
8 has played havoc with conducting charitable bingo this year
9 and while many halls have reopened under the capacity limits
10 in place, many others have not due to health concerns for the
11 conductors and their customers. This will likely result in
12 many charities having difficulty meeting the net proceeds
13 requirements.

14 TCA strongly supports the proposed
15 modifications to §402.450 submitted by -- submitted to staff
16 by Mr. Bresnen and the Bingo Interest Group, and not only
17 will this provide charities with a clearer path in meeting
18 the net proceeds requirements, it also provides the staff
19 with greater flexibility in their enforcement of this
20 important requirement.

21 We're very -- like the others, we're very
22 appreciative of the collaborative approach that staff has
23 followed in this review process, we very much appreciate
24 that, and we look forward to continuing to work with you once
25 the revised rules are adopted.

1 And that ends my comment.

2 MR. VANCE: All right. Thank you, Tom. Tom
3 Hanson, do you have any questions for Tom Stewart?

4 MR. HANSON: I do not, but I do thank him for
5 his participation. Thank you, Tom, sir.

6 MR. VANCE: All right. Last chance here. I
7 don't see anyone who's raised their hand to speak or provided
8 anything in the chat. I'm looking on the attendees and it
9 looks like most folks are staff members who I don't imagine
10 are going to make public comments.

11 So with that, I think that's going to conclude
12 this meeting. But again, remember that if you would like to
13 submit written comments, that period is open through
14 September 21st via mail, email or fax, as provided in the
15 August 21st issue of the Texas Register.

16 One last check. Okay, there are no more
17 requests to speak, so no more witnesses, we're going to
18 conclude this hearing. The time is 9:23 a.m. and we are
19 adjourned. Thank you very much. This public comment session
20 is closed.

21 (Adjourned and concluded at 9:23 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF HARRIS)

I, Kimberly C. McCright, Certified Vendor and Notary in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of September, 2020.

/s/ Kimberly C. McCright
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