

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 899

By: Littlefield of the Senate

and

Fields, Hutchison,
Weaver, Mass and Bastin
of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to amusements and sports; amending Section 3, Chapter 328, O.S.L. 1992, as amended by Section 3, Chapter 305, O.S.L. 1993, Section 5, Chapter 328, O.S.L. 1992, Sections 6 and 8, Chapter 328, O.S.L. 1992, as amended by Sections 5 and 6, Chapter 305, O.S.L. 1993, Sections 9, 10 and 11, Chapter 328, O.S.L. 1992, Section 18, Chapter 328, O.S.L. 1992, as amended by Section 1, Chapter 274, O.S.L. 1995 and Section 22, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Sections 402, 404, 405, 407, 408, 409, 410, 417 and 421), which relate to the Oklahoma Charity Games Act; modifying definitions and defining terms; providing for licensing of employees and managers of organizations conducting charity games; specifying license fees; modifying organizations which may obtain exemption from specific provisions of act and specifying provisions related thereto; modifying certain limitation on prizes; modifying circumstances under which Alcoholic Beverage Laws Enforcement Commission may levy fines or take certain actions related to licensing; requiring ABLE Commission to refuse to issue license to certain persons; requiring license revocation under certain circumstances; authorizing certain organizations to conduct particular type of bingo game and requiring certain documentation therefor; allowing progressive games under certain conditions; limiting conduct of charity games to certain persons; requiring such persons to be licensed if compensated; requiring designation of manager of charity gaming operations and requiring report thereof; providing for reporting of change in managers and requiring certain approval; specifying certain acts for which manager held responsible; modifying information required to be filed with license applications; modifying games which may be conducted in locations where alcoholic beverage may be sold, served or permitted to be consumed; modifying games upon which certain taxes levied; providing additional method of remitting taxes due; providing procedures therefor; requiring Tax Commission to prescribe certain forms and promulgate certain rules; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 328, O.S.L. 1992, as amended by Section 3, Chapter 305, O.S.L. 1993 (3A O.S. Supp. 1995, Section 402), is amended to read as follows:

Section 402. As used in the Oklahoma Charity Games Act, Section 401 et seq. of this title:

1. "Bingo" means a game in which each player receives a bingo face and covers the squares according to the numbers, letters, or combination of numbers and letters that have been announced by the caller. The numbers and letters called are on an object selected at random either manually or mechanically from a receptacle in which have been placed the objects bearing the numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the bingo face squares. The winner of each bingo game is the player who first properly covers a predetermined and announced pattern of squares upon the bingo face being used by the player;

2. "Bingo face" means a flat piece of paper which is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter or combination of numbers and letters and with one or more squares designated as a "free" space ~~with one or more word "Oklahoma" and a facsimile outline of a map of Oklahoma in it, which cannot be reused after the game in which a player has used it is over;~~

3. "Breakopen ticket card" means a single folded or banded ticket or a card, the face of which is initially covered or otherwise hidden from view to conceal a number, letter, symbol, or set of letters or symbols, a few of which numbers, letters or symbols out of every set of charity game tickets have been designated in advance at random as prize winners and which is used in a breakopen ticket game;

4. "Breakopen ticket game" means a game wherein a player receives a breakopen ticket card. A breakopen ticket game shall meet the following criteria:

- a. the game shall be assembled so that no placement of winners or losers exists that allows the possibility of prize manipulation,
- b. the concealed numbers, letters, or symbols shall not be visible from the outside of the game using high intensity lamps. Protection shall be provided by the opaque paper stock employed, with the possible addition of colors and printed blockout patterns or by use of an aluminum foil laminate,
- c. a unique symbol or printed security device, such as a specific number keyed to particular winners or the name of the symbol or some of the symbol colors changed for a window, or other similar protection shall be placed in the winning windows of prize windows to ensure that the winner image is unique,
- d. it shall not be possible to detect or pick out winning from losing tickets through variations in printing graphics, color, or use of different printing plates,
- e. it shall not be possible to isolate winning or potential winning tickets from minor variations in size or cutting of the tickets comprising a particular packet, and
- f. each ticket in a game shall have a serial number. All tickets in a game shall have the same serial number appearing in a conspicuous place on the ticket;

5. "Business entity" is a person, company, corporation, or partnership organized for profit;

6. "Charity game" means a bingo game, U-PIK-EM bingo game, or breakopen ticket game conducted by an organization pursuant to the provisions of the Oklahoma Charity Games Act;

7. "Charity game equipment" means any object uniquely designed for use in the conducting of a charity game including, but not limited to, bingo faces, U-PIK-EM bingo game sets, and breakopen ticket cards. Items used in conducting charity games which are not charity game equipment are ink markers, furniture and general furnishings of rooms where charity games are conducted;

8. "Commission" or "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission;

9. "Day session" means the set time frame within which conducting of charity games is authorized beginning no earlier than 10:00 a.m. and ending no later than 5:00 p.m.;

10. "Deal" means one series of breakopen ticket game cards which have a stated number of winner payouts and a stated amount of the payouts;

11. "Distributor" means a person or business entity that sells, markets, or otherwise provides charity game equipment to an organization;

12. "Doing business" means either conducting a charity game by an organization or providing goods or services to an organization by a business entity;

13. "Employee" means a person who works for compensation in a licensed charity game establishment;

14. "Immediate family member" means a spouse, parent, child or sibling or spouse of a parent, child or sibling of a resident of a facility exempt from specific provisions of the Oklahoma Charity Games Act as provided in subsection C of Section 405 of this title;

~~14.~~ 15. "Licensee" means any person, organization, or business entity which has received a license from the Commission;

~~15.~~ 16. "Location" means the building, including the individual rooms and equipment in the rooms, grounds, and appurtenances, including adjacent premises if subject to the direct or indirect control of the organization while conducting a charity game, which are used in connection with or in furtherance of the conducting of a charity game;

~~16.~~ 17. "Manager" means a person who:

- a. works for compensation in a licensed charity game establishment,
- b. has supervisory authority over other employees or over the conduct of charity games, and
- c. has been designated as such by the organization pursuant to the provisions of subsection D of Section 408 of this title;

18. "Manufacturer" means a person or business entity that assembles from raw materials, supplies, or subparts to form a completed series of charity game equipment for use in charity games and that sells, markets, or otherwise provides such equipment to a distributor;

~~17.~~ 19. "Night session" means the set time frame within which conducting of charity games is authorized beginning no earlier than 5:00 p.m. and ending no later than 12:00 ~~p.m.~~ midnight;

~~18.~~ 20. "Organization" means a religious, charitable, labor, fraternal, educational, or other type of association or any branch, lodge, chapter, or auxiliary of such association which:

- a. operates without profit to its members,
- b. has been in existence and been operating as a nonprofit organization within this state for not less than two (2) years prior to applying for an organization license; provided, this requirement shall not apply to any branch, lodge, chapter or auxiliary of a religious, charitable, labor, fraternal, educational or other type of association if such religious, charitable, labor, fraternal, educational or other type of association has been in existence and been operating as a nonprofit organization within this state for not less than two (2) years prior to the branch, lodge, chapter or auxiliary applying for an organization license,
- c. is tax exempt pursuant to the provisions of paragraphs (3), (4), (5), (6), (7), (8), (9), (10), or (19) of subsection (c) of Section 501 of the

United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq., and
d. formulates bylaws which clearly identify and establish:

- (1) the method of electing officers and their duties,
- (2) the method by which members are elected, initiated or admitted,
- (3) the rights and privileges of each member,
- (4) that each member has one vote, and
- (5) that membership rights are personal to the member and not assignable;

~~19.~~ 21. "Progressive game" means a game in which prizes are allowed to be carried over and increased from session to session;

22. "U-PIK-EM bingo game" means a game played wherein a player writes the numbers on a U-PIK-EM bingo game set. The player retains one sheet of the set and deposits the second sheet in a receptacle in the control of the organization. The player then covers the numbers as the caller announces a number. The numbers called are on an object selected at random either manually or mechanically from a receptacle in which have been placed the objects bearing the numbers. The winner of each U-PIK-EM bingo game is the player who first covers all the numbers appearing on the retained sheet in accordance with the pattern as designated on the sheet; and

~~20.~~ 23. "U-PIK-EM bingo game set" means two paper sheets of carbonless paper both bearing identical serial numbers on which a player writes numbers, wherein one sheet is retained by the player and used for playing and one sheet is held by the organization and used for verifying winners.

SECTION 2. AMENDATORY Section 5, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Section 404), is amended to read as follows:

Section 404. A. All licenses issued pursuant to the provisions of the Oklahoma Charity Games Act shall be valid for one (1) year from the date of issue.

B. A license issued by the ABLE Commission shall not be transferable, sold, leased or assigned under any circumstances.

C. The initial and renewal fees for licenses authorized by the Oklahoma Charity Games Act shall be as follows:

1. Organization License - One Hundred Dollars (\$100.00);
2. Distributor License - Five Thousand Dollars (\$5,000.00);

~~and~~

3. Manufacturer License - Two Thousand Dollars (\$2,000.00);
4. Employee License - Five Dollars (\$5.00); and
5. Manager License - Fifteen Dollars (\$15.00).

D. All fees received by the Commission pursuant to this section shall be forwarded to the State Treasurer for deposit in the General Revenue Fund.

SECTION 3. AMENDATORY Section 6, Chapter 328, O.S.L. 1992, as amended by Section 5, Chapter 305, O.S.L. 1993 (3A O.S. Supp. 1995, Section 405), is amended to read as follows:

Section 405. A. Any organization or an educational organization which is exempt from taxation pursuant to the provisions of Section 509(a)(1) of the Internal Revenue Code, 26 U.S.C., Section 509(a)(1), which conducts any charity game activities not more than four times per year may obtain an exemption from specific provisions of the Oklahoma Charity Games Act, Section 401 et seq. of this title, as provided in this section. Such exemption shall be obtained by the filing of a verified application with the ABLE Commission signed by the executive officer of said organization and containing the following information:

1. The name and address of the organization;
2. The name, address and telephone number of the executive officer of the organization or such other person authorized to receive documents or other information from the Commission on behalf of the organization; and

3. A statement that ~~said~~ the organization shall conduct a charity game session four or fewer times per calendar year and the dates and times and location wherein such activities shall occur.

B. Any organization or an educational organization which is exempt from taxation pursuant to the provisions of Section 509(a)(1) of the Internal Revenue Code, 26 U.S.C., Section 509(a)(1), which conducts any charity game activities not more than four times per year which has obtained an exemption from the Commission shall not:

1. Be required to obtain any type of license required by the Oklahoma Charity Games Act;

2. Be restricted to the use of bingo faces as defined in the Oklahoma Charity Games Act but shall not be authorized to use electronic facsimile of faces;

3. Be required to purchase charity game equipment from persons or business entities licensed pursuant to the provisions of the Oklahoma Charity Games Act; or

4. Be subject to any restrictions in this act or rules of the Commission relating to conducting charity games on certain days of the week or during certain hours.

C. Any hospital, nursing home, residential care facility, senior citizens' center, retirement center or convalescent facility which conducts charity games at such facilities on a regular basis for the residents or regular patrons of the facility and their immediate family members may obtain an exemption from specific provisions of the Oklahoma Charity Games Act as provided in this section. Such exemption shall be obtained by the filing of a verified application with the Commission signed by the owner or supervisor of the facility and containing the following information:

1. The name and address of the hospital, nursing home, residential care facility, senior citizens' center, retirement center or convalescent facility;

2. The name, address and telephone number of the owner or supervisor of the facility or such other person authorized to receive documents or other information from the Commission on behalf of the facility; and

3. A statement that ~~said~~ the facility shall conduct charity games at the specified facility for the residents or regular patrons of the facility and their immediate family members. Provided, the prizes awarded either in cash or any other thing of value shall not exceed ~~Two Hundred Fifty Dollars (\$250.00)~~ Five Hundred Dollars (\$500.00) in any one (1) day at any such hospital, nursing home, residential care facility, senior citizens' center, retirement center or convalescent facility.

D. Any hospital, nursing home, residential care facility, senior citizens' center, retirement center or convalescent facility which conducts charity games at such facilities on a regular basis for the residents or regular patrons of the facility or their immediate family members which has obtained an exemption from the Commission shall not:

1. Be required to obtain any type of license required by the Oklahoma Charity Games Act;
2. Be restricted to the use of bingo faces, as defined in the Oklahoma Charity Games Act but shall not be authorized to use electronic facsimile of faces;
3. Be required to purchase charity game equipment from persons or business entities licensed pursuant to the provisions of the Oklahoma Charity Games Act; or
4. Be subject to any restrictions in the Oklahoma Charity Games Act or rules of the Commission relating to conducting charity games on certain days of the week or during certain hours.

SECTION 4. AMENDATORY Section 8, Chapter 328, O.S.L. 1992, as amended by Section 6, Chapter 305, O.S.L. 1993 (3A O.S. Supp. 1995, Section 407), is amended to read as follows:

Section 407. A. The ABLE Commission shall refuse to issue, deny renewal of, suspend, or revoke any license for any one or more of the following reasons:

1. Obtaining a license from the Commission through fraud, misrepresentation, or concealment of a material fact;
2. Noncompliance with the tax laws of this state; or
3. Failure to pay any fine levied by the Commission.

B. The Commission may levy fines or refuse to issue, deny renewal of, suspend, or revoke any license for any one or more of the following reasons:

1. Violation of any provision of the Oklahoma Charity Games Act, Section 401 et seq. of this title. A determination of action on a license pursuant to the provisions of this subsection shall not be limited to actions against a licensee that has been convicted of a violation in a court of competent jurisdiction;

2. Violation of any rule adopted by the Commission;

3. Failure to implement an order of the Commission;

4. Failure by an organization to provide adequate internal control in accordance with the rules for such control established by the Commission; or

5. Failure to keep an adequate record-keeping system, daily records and monthly financial records reports in accordance with ~~the standard system~~ rules established or adopted by the Commission.

C. The Commission is hereby authorized to establish a penalty schedule for violations of any provision of the Oklahoma Charity Games Act or for violation of any rule of the Commission. The schedule may provide fines or suspension or revocation or both fines and suspension or revocation for violations of the act or rules as determined by the Commission. Penalties shall be increasingly severe for each violation.

D. All administrative fines collected by the Commission pursuant to the provisions of this section shall be forwarded to the State Treasurer for deposit in the General Revenue Fund.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407.1 of Title 3A, unless there is created a duplication in numbering, reads as follows:

The ABLE Commission shall refuse to issue a license to any person who has been convicted of a felony of any state or federal law relating to gambling. If the ABLE Commission finds that any current licensee has been convicted of a felony of any state or federal law relating to gambling, the ABLE Commission shall revoke such license.

SECTION 6. AMENDATORY Section 9, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Section 408), is amended to read as follows:

Section 408. A. Any organization desiring to conduct a charity game in this state shall apply to the ABLE Commission for an organization license. An organization license shall only be issued to an organization. A business entity shall not be qualified under any conditions to hold an organization license.

B. An organization shall be limited to only one license and to doing business at only one location.

C. An organization shall use only disposable bingo faces purchased from a licensed distributor. Only one game shall be played on each bingo face except as otherwise provided in this subsection; provided:

1. An organization which has paid less than Fifty Thousand Dollars (\$50,000.00) in taxes pursuant to the provisions of Section 421 of this title in the preceding calendar year may conduct bingo games in which up to five games may be played on a single bingo face during a session and may offer a combination of winners not to exceed five prizes. An organization desiring to conduct such games shall obtain documentation from the Oklahoma Tax Commission that it qualifies to conduct such games pursuant to the provisions of this paragraph prior to offering such games; and

2. Nothing in this section shall be deemed to exclude progressive games if the prize limit per session is not exceeded.

D. Only an organization or a ~~person paid by~~ licensed employee or manager of an organization shall conduct a charity game for which a charge is made. Compensation paid to an organization or other person for conducting a charity game shall not exceed two times the amount of the minimum wage specified pursuant to federal law. A compensated employee or manager of an organization shall be required to obtain an employee or manager license from the Commission. Every organization licensee pursuant to the Oklahoma Charity Games Act shall designate one person to be manager of its charity gaming operations and shall report the name and address of its manager, if such manager is compensated for such service, to

the ABLE Commission. Each such organization shall report a change in managers, if such managers are compensated for such service, to the Commission on the first working day after such change is made and receive approval from the Commission for the change. The manager shall be held responsible for any violation of the Oklahoma Charity Games Act or any rule of the Commission and for any act of his or her servant, agent, employee or representative in violation of any law or rule.

E. An initial application for an organization license shall be sworn and attested to by a principal officer of the applicant organization and shall include:

1. A certified copy of the document from the U.S. Internal Revenue Service which grants the applicant tax-exempt status and the federal identification number;

2. ~~A certified copy of the articles of incorporation and~~ The certificate of incorporation of the organization;

3. A copy of the bylaws of the organization;

4. A copy of the minutes of the meeting of the organization at which the governing body was elected and the terms of office of each member of the governing body;

5. A copy of the minutes of the meeting of the governing body of the organization at which the application for the license was authorized;

6. The name and address of a person authorized to receive service of process on behalf of the organization;

7. The address of the location where the charity games will be conducted; ~~and~~

8. A copy of the lease agreement for the premises of its charity game activities and for any charity game equipment which it leases; and

9. Such other information deemed necessary by the Commission to assure eligibility for a license.

F. A renewal application shall only include any changes in the information required to be submitted with the initial application.

G. An organization license shall be placed within public view at all times in a conspicuous place at the location where the charity game is being conducted.

SECTION 7. AMENDATORY Section 10, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Section 409), is amended to read as follows:

Section 409. A. Any person or business entity desiring to sell or supply any charity game equipment to a licensed organization in this state shall apply to the ABLE Commission for a distributor license.

B. An application for a distributor license shall include:

1. The name and address of the applicant and the name and address of each of its separate locations distributing charity game equipment; ~~and~~

2. The name and address of all owners of the distributing business entity, if the business entity is not a corporation. If the business entity is a corporation, the name and address of each of the officers and directors of the corporation and of each stockholder owning ten percent (10%) or more of any class of stock in the corporation; and

3. If the applicant is a person who is not a resident of this state or a business entity not located in this state, the full name, business address and home address of the person who is a resident of this state, or the full name and address of a domestic corporation located in this state, or the full name and address of a foreign corporation authorized to transact business in this state pursuant to Section 1130 of Title 18 of the Oklahoma Statutes, who or which is authorized to receive service of process on behalf of the applicant.

SECTION 8. AMENDATORY Section 11, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Section 410), is amended to read as follows:

Section 410. A. Any person or business entity desiring to sell or supply charity game equipment to a distributor in this state shall apply to the ABLE Commission for a manufacturer license.

B. An application for a manufacturer license shall include:

1. The name and address of the applicant and the name and address of each of its separate locations manufacturing charity game equipment;

2. The name and address of all owners of the manufacturing business entity, if the business entity is not a corporation. If the business entity is a corporation, the name and address of each of the officers and directors of the corporation and of each stockholder owning ten percent (10%) or more of any class of stock in the corporation; and

3. If the applicant is a foreign manufacturer, a certificate of good standing from the Office of the Secretary of State, issued within sixty (60) days prior to filing the application pursuant to Section 1130 of Title 18 of the Oklahoma Statutes. If, however, the foreign corporation is excepted from qualifying to do business in this state pursuant to Section 1132 of Title 18 of the Oklahoma Statutes, then the foreign corporation shall supply the Commission with the full name, business address, and home address of the person who is a resident of this state, or the full name and address of a domestic corporation located in this state, or the full name and address of a foreign corporation authorized to transact business in this state, who or which is authorized to receive service of process on behalf of the business entity.

SECTION 9. AMENDATORY Section 18, Chapter 328, O.S.L. 1992, as amended by Section 1, Chapter 274, O.S.L. 1995 (3A O.S. Supp. 1995, Section 417), is amended to read as follows:

Section 417. No licensed organization shall sell, serve or permit to be consumed any alcoholic beverage as defined in Section 506 of Title 37 of the Oklahoma Statutes or low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes in any room or outdoor area where and during the time a ~~charity~~ bingo or U-PIK-EM game is being conducted.

SECTION 10. AMENDATORY Section 22, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1995, Section 421), is amended to read as follows:

Section 421. A. There is hereby levied a tax in the amount of one and one-half cent (\$0.015) upon each bingo face, each progressive game sheet and each U-PIK-EM bingo game set sold in this state to be paid by the distributor, except as otherwise provided in subsection D of this section.

B. There is hereby levied upon each breakopen ticket game sold in this state a tax in the amount of ten percent (10%) on the gross receipts of the retail sales value to be paid by the distributor, except as otherwise provided in subsection D of this section. For purposes of this subsection, "gross receipts of the retail sales value" means the stated retail per breakopen ticket price multiplied by the number of tickets in each packaging container of breakopen tickets.

C. There is hereby levied upon all charity game equipment except bingo faces, U-PIK-EM bingo game sets, and breakopen ticket games a tax in the amount of ten percent (10%) of the price paid for such equipment as shown on the purchase invoice.

D. An organization licensed to conduct charity games at a location at which the seating capacity to play charity games is less than one hundred persons, as determined by the ABLE Commission, may, in lieu of paying the distributor for the taxes levied pursuant to subsections A and B of this section, remit monthly an equivalent amount of tax to the Oklahoma Tax Commission. The tax shall be due not later than the fifteenth day of each month as and in the manner that sales taxes are deemed due pursuant to the Oklahoma Sales Tax Code, Section 1350 et seq. of Title 68 of the Oklahoma Statutes, and shall be based upon the amount of charity game activity conducted during the preceding month. Every distributor selling bingo faces, progressive game sheets, U-PIK-EM bingo game sets and breakopen ticket games upon which the taxes levied pursuant to subsections A and B of this section have not been paid shall report such sales and the purchaser thereof to the Tax Commission. The Tax Commission shall prescribe forms and promulgate rules to implement the provisions of this subsection.

SECTION 11. This act shall become effective July 1, 1996.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-2-2907

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