

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1790

By: Hefner of the House

and

Easley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to amusements and sports; amending 3A O.S. 2001, Sections 401, 402, 407, 408 and 418, which relate to the Oklahoma Charity Games Act; modifying provisions related to legislative declarations; modifying definitions; modifying requirements related to conduct of charity games; providing rebuttable presumption related to compensation paid to certain persons; prescribing standard for review; providing for payment of interest upon certain amount of compensation; prescribing requirements related to reasonableness of compensation; requiring the ABLE Commission to revoke and refuse to issue or renew manager licenses if contraband is found; providing for a fine; modifying certain prohibited acts; authorizing certain method of play; providing for applicability of certain provisions; providing for construction with respect to other laws and with respect to unauthorized charity games; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 3A O.S. 2001, Section 401, is amended to read as follows:

Section 401. A. Sections ~~2 through 28~~ 401 through 427 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Charity Games Act".

B. For the protection of charitable organizations and the general public seeking to assist such organizations through participation in certain charity organized activities, the Legislature declares that it is necessary to restrict the conducting of certain games of chance by enacting an Oklahoma Charity Games

Act. Such restrictions are for the purpose of authorizing the conducting of certain ~~games of chance~~ bingo games, such as bingo, U-PIK-EM games, breakopen ticket games and other types of instant winner games that are similar to bingo to certain organizations which function exclusively for charitable purposes in conformance with state and federal laws regulating such organizations.

The Legislature finds that it is in the interest of the health, welfare, and safety of the citizens of the State of Oklahoma that games of chance offered to the public by other than charitable organizations which are commonly referred to as "commercial bingo" or "commercial operations" are hereby prohibited in this state.

The Legislature further finds that offering to the public certain types of games of chance including but not limited to games commonly referred to as bingo games, U-PIK-EM games, breakopen ticket games and other types of instant winner games that are similar to bingo by other than a licensed organization is declared to be a "commercial operation" and is in violation of the law.

The Legislature further finds that bingo games, U-PIK-EM bingo games, breakopen ticket games, similar to bingo games, and charity games have different and specific meanings pursuant to the Oklahoma Charity Games Act and strict construction should be applied to each term as the term relates to the Oklahoma Charity Games Act.

SECTION 2. AMENDATORY 3A O.S. 2001, 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 charity game player is required to be physically present at the charity game location at the start of the bingo game and must be physically present at the charity game location in order to win at the time the winner is announced and published. Bingo is a game in which a charity game 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 bingo caller and published by the organization or the organization's agent. The numbers and letters called ~~are~~ and selected and published by the organization or the organization's agent must be on an object selected ~~at random either~~ randomly or manually or mechanically from a receptacle in which have been placed the objects bearing the pool of random possibilities not less than one (1) in seventy-five (75) for each number, letter or combination of numbers and letters selected at the start of each game. The numbers, letters, or combinations of numbers and letters ~~corresponding~~ must correspond to the system used for designating the bingo face squares. The winner of each bingo game is the charity game player who first properly covers a predetermined and announced and published pattern of squares upon the bingo face being used by the charity game 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 the word "Oklahoma" and a facsimile outline of a map of Oklahoma in it, which cannot be reused after the game in which a charity game 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 charity game 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" means 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~~ a game authorized 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. "Charity game player" means a person who physically attends a charity game location and participates in a charity game pursuant to the provisions of the Oklahoma Charity Games Act;

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

~~9.~~ 10. "Day session" means the set time frame within which conducting of ~~charity games~~ bingo games, U-PIK-EM bingo games and breakopen ticket games is authorized beginning no earlier than 10:00 a.m. and ending no later than 5:00 p.m.;

~~10.~~ 11. "Deal" means one series of breakopen ticket game cards which has a stated number of winner payouts and a stated amount of the payouts;

~~11.~~ 12. "Distributor" means a person or business entity that sells, markets, or otherwise provides charity game equipment to an organization;

~~12.~~ 13. "Doing business" means either conducting a charity game by an organization or providing goods or services to an organization by a business entity;

~~13.~~ 14. "Employee" means a person who works for compensation in a licensed charity game establishment for an organization;

~~14.~~ 15. "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;

~~15.~~ 16. "Licensee" means any person, organization, or business entity which has received a license from the Commission;

~~16.~~ 17. "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;

~~17.~~ 18. "Manager" means a person who:

- a. is ~~an employee of~~ authorized by an organization to conduct charity games on behalf of the organization,
- 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.~~ 19. "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;

~~19.~~ 20. "Night session" means the set time frame within which conducting of ~~charity games~~ bingo games, U-PIK-EM bingo games and breakopen ticket games is authorized beginning no earlier than 5:00 p.m. and ending no later than 12:00 p.m. midnight;

~~20.~~ 21. "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 for not less than two (2) years prior to applying for an organization license,
- c. is exempt from taxation pursuant to the provisions of paragraphs (3), (4), (5), (6), (7), (8), (9), (10), or (19) of subsection (c) of Section 501 or paragraph (1) of subsection (a) of Section 509 of the United States

Internal Revenue Code of 1986, as amended, 26 U.S.C.,
Section 501(c) et seq. or Section 509(a)(1), and

d. formulates bylaws which clearly identify and
establish:

- (1) method of electing officers and their duties,
- (2) 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;

~~21.~~ 22. "Progressive game" means a game in which prizes are
allowed to be carried over and increased from session to session;

~~22.~~ 23. "Similar to bingo" means a game that meets the
definition of bingo as defined in paragraph 1 of this section or a
breakopen ticket game as defined in paragraph 4 of this section and
uses a similar bingo face as defined in paragraph 2 of this section,
other than a flat piece of paper or uses a similar breakopen ticket
face as defined in paragraphs 3 and 4 of this section, other than
opaque paper card stock. This shall include, but is not limited to,
a Braille bingo face or any other type of bingo face whatsoever,
that may or may not be used as an aide to the hearing impaired,
sight impaired or physically disabled charity game player;

24. "U-PIK-EM bingo game" means a game played wherein a charity
game player writes the numbers on a U-PIK-EM bingo game set. The
charity game player retains one sheet of the set and deposits the
second sheet in a receptacle in the control of the organization.
The charity game player then covers the numbers as the U-PIK-EM
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 charity game player who

first covers all the numbers appearing on the retained sheet in accordance with the pattern as designated on the sheet; ~~and~~

~~23.~~ 25. "U-PIK-EM caller" or "bingo caller" means any manner of communication that clearly conveys the results of the randomly selected numbers and letters in a charity game to a charity game player; and

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

SECTION 3. AMENDATORY 3A O.S. 2001, 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 ABLE Commission shall revoke and refuse to issue or renew any license for a manager of a licensed location if items declared to be contraband pursuant to Section 426 of this title are found at the location. In addition, the Commission may levy a fine against the manager in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

C. 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 adopted by the Commission; or

5. Failure to keep financial records in accordance with the standard system established by the Commission.

~~C.~~ D. Except as provided in subsection B of this section, 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.~~ E. 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 4. AMENDATORY 3A O.S. 2001, 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 and shall be used by that organization only. A business entity shall not be qualified under any conditions to hold or use 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; provided, nothing in this section shall be construed to exclude progressive games.

D. Only an organization or an employee of the organization or manager of an organization shall conduct a charity game for which a charge is made. Compensation may be paid to an organization ~~or~~ other person, employee or manager of an organization for conducting a charity game. Compensation for conducting ~~charity~~ a bingo game, U-PIK-EM game or breakopen ticket games by an employee of the organization shall be paid in accordance with minimum wage provisions of federal law, and shall not exceed two times the amount of the minimum wage specified pursuant to federal law. Compensation in excess of forty percent (40%) of the annual gross revenue paid to a manager of an organization as compensation for conducting a bingo game, U-PIK-EM game or breakopen ticket game shall create a rebuttable presumption that said compensation is excessive and may be reviewed by the Commission for reasonableness. The compensation paid to a manager for conducting a bingo game, U-PIK-EM game or breakopen ticket game shall include all expenses in order to conduct said games, excluding salaries for employees, payouts for winnings and taxes. In all cases regarding the review of reasonableness by the Commission of compensation paid to a manager of an organization the standard shall be what is in the best interest of the organization. In the event any portion of the management compensation is determined to be excessive by the Commission, the unreasonable portion of the management compensation shall be returned to the organization with interest at the rate of eighteen percent (18%) per annum from the date of the unreasonable taking by the manager. Management expenses associated with a bingo game, U-PIK-EM game or breakopen ticket game may be apportioned on a pro rata basis to the manager of an organization to the extent those expenses are incurred in order to conduct the specific game.

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 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. 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 5. AMENDATORY 3A O.S. 2001, Section 418, is amended to read as follows:

Section 418. A. No ~~charity~~ bingo game, U-PIK-EM game or breakopen ticket game shall be conducted on the first day of the week, commonly known and designated as Sunday.

B. No charity bingo game, U-PIK-EM game or breakopen ticket game shall be conducted between the hours of midnight and 10:00 a.m.

C. An organization shall not conduct more than two sessions at a location during a calendar day. All charity games may be played simultaneously with any other charity game.

D. No person under eighteen (18) years of age shall play breakopen ticket games; provided, any person under the age of eighteen (18) may play charity games other than breakopen ticket games when accompanied by a parent or guardian if such play is permitted by the organization conducting the charity game.

E. No licensee shall sell any tangible property or services in connection with operations of charity games in any manner in which the purchaser incurs a debt to the organization or to any of its members or employees.

F. The Oklahoma Charity Games Act shall include all limits and restrictions to the time, days, sessions, prizes, equipment and definitions to specific charity games and no limits or restrictions whatsoever shall apply to any other charity games not specifically designated and described in the Oklahoma Charity Games Act. In the event that a conflict arises between the permissibility of any charity game under the Oklahoma Charity Games Act and any other Oklahoma Statute, the Oklahoma Charity Games Act shall prevail and shall take precedence over any other Oklahoma statute whatsoever.

G. Nothing in the Oklahoma Charity Games Act shall be construed to allow the following types of games by charitable organizations:

1. Slot machines used as electromechanical facsimiles of bingo;
2. Electromechanical facsimiles of any game of chance;
3. Lotteries; and
4. Charity raffles.

SECTION 6. This act shall become effective July 1, 2003.

SECTION 7. 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.

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