

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1049

By: Claunch

AS INTRODUCED

An Act relating to amusements and sports; amending 3A O.S. 2001, Sections 402, 416, 418, 419, 421, 422 and 426, which relate to the Oklahoma Charity Games Act; eliminating breakopen ticket games from list of games allowed pursuant to the Oklahoma Charity Games Act; removing all references to breakopen ticket games and breakopen ticket cards from the Oklahoma Charity Games Act; amending 21 O.S. 2001, Section 966, which relates to the definition of punchboard; modifying definition; and declaring an emergency.

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

SECTION 1. 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 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 the 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 blackout 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.~~ 4. "Charity game" means a bingo game, or a U-PIK-EM bingo game, ~~or breakopen ticket game~~ conducted by an organization pursuant to the provisions of the Oklahoma Charity Games Act;

~~7.~~ 5. "Charity game equipment" means any object uniquely designed for use in the conducting of a charity game including, but not limited to, bingo faces, and 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.~~ 6. "Commission" or "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission;

~~9.~~ 7. "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 has a stated number of winner payouts and a stated amount of the payouts;~~

~~11.~~ 8. "Distributor" means a person or business entity that sells, markets, or otherwise provides charity game equipment to an organization;

~~12.~~ 9. "Doing business" means either conducting a charity game by an organization or providing goods or services to an organization by a business entity;

~~13.~~ 10. "Employee" means a person who works for compensation in a licensed charity game establishment;

~~14.~~ 11. "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.~~ 12. "Licensee" means any person, organization, or business entity which has received a license from the Commission;

~~16.~~ 13. "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.~~ 14. "Manager" means a person who:

- a. is an employee of an 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.~~ 15. "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.~~ 16. "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;

~~20.~~ 17. "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.~~ 18. "Progressive game" means a game in which prizes are allowed to be carried over and increased from session to session;

~~22.~~ 19. "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

~~23.~~ 20. "U-PIK-EM bingo game set" means two paper sheets of carbonless paper both bearing identical serial numbers on which a player writes numbers or letters, 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 3A O.S. 2001, Section 416, is amended to read as follows:

Section 416. All damaged and winning bingo faces, ~~breakopen ticket cards,~~ and U-PIK-EM bingo game sets shall be reported and disposed of in such manner as the Commission shall prescribe.

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

Section 418. A. No charity game shall be conducted on the first day of the week, commonly known and designated as Sunday.

B. No charity 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.

D. ~~No person under eighteen (18) years of age shall play breakopen ticket games; provided, any~~ 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.

SECTION 4. AMENDATORY 3A O.S. 2001, Section 419, is amended to read as follows:

Section 419. ~~A.~~ In the conducting of a bingo game or a U-PIK-EM bingo game, not more than a total of Six Thousand Dollars (\$6,000.00) in cash or any other thing of value shall be paid out

during a day session or a night session; provided, the ABLE Commission may, in its discretion, raise the limit to an amount not to exceed Twelve Thousand Dollars (\$12,000.00) for an individual organization licensee. Any person may protest the raising of the limit by filing a written and signed protest with the Commission. Within thirty (30) calendar days of the date of receipt of such protest, the Commission shall conduct a hearing on such protest. Such total shall include awards for winning the game, and all other cash or other thing of value given or awarded during the session. For purposes of this subsection, value means the retail cost which would be paid if the item were bought in a retail store.

~~B. The Commission is hereby authorized to set the limits on the type and purchase price of each breakopen ticket game. Such breakopen ticket card price limit shall not exceed Two Dollars (\$2.00). A breakopen ticket game shall be submitted by the manufacturer to the Commission for approval. Only approved breakopen ticket games may be offered to an organization.~~

SECTION 5. AMENDATORY 3A O.S. 2001, Section 421, is amended to read as follows:

Section 421. A. There is hereby levied a tax in the amount of one cent (\$0.01) upon each bingo face and each U-PIK-EM bingo game set sold in this state to be paid by the distributor.

~~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. 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, and 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.

SECTION 6. AMENDATORY 3A O.S. 2001, Section 422, is amended to read as follows:

Section 422. A. All taxes levied pursuant to the provisions of Section 421 of this title shall be collected and remitted by the distributor to the Oklahoma Tax Commission.

B. The distributor shall submit a copy of each invoice from the manufacturer from which the distributor obtained the charity game equipment stating the amount and price of each item obtained.

C. The distributor shall submit a copy of each invoice submitted for payment to a purchaser of charity game equipment.

D. The taxes shall be due and paid monthly, and shall be deemed delinquent if not paid on or before the last day of the month following the month during which the items were sold to an organization.

E. The distributor shall not require a payment of the taxes levied pursuant to Section 421 of this title from any organization sooner than the fifteenth day of the month following the month during which items were sold to the organization. The distributor may require payment of the tax at the time of purchase from an organization if the organization does not make timely payments to the distributor as required by this section.

F. In computing the amount of charity games tax due, the distributor shall be entitled to a credit against the tax payable in the amount of tax paid by the distributor that has become uncollectible from an organization. The credit shall be claimed on the first or second return following the date on which the distributor was entitled to collect the tax as provided in this section if the payment remains unpaid as of the filing date of that return or the credit shall be disallowed.

G. An organization that fails to pay the tax to a distributor which has claimed a credit for the uncollectible taxes shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission may pursue collection thereof from the organization. Such a distributor shall be prohibited from making further sales to such an organization until the organization has paid all taxes due. Notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, the Tax Commission shall notify the ABLE Commission of any organization which fails to remit the charity games tax to its distributor.

H. The Tax Commission shall adopt rules establishing the evidence a distributor must provide to receive the credit. The claim for credit shall identify the defaulting organization and any tax liability that remains unpaid.

I. Charity game equipment taxed pursuant to the provisions of the Oklahoma Charity Games Act, Section 401 et seq. of this title, shall be exempt from taxation pursuant to any other law of this state levying a sales tax, consumers tax, or use tax.

J. A licensed distributor shall be allowed a discount of one percent (1%) of the taxes due pursuant to the provisions of the Oklahoma Charity Games Act as remuneration for establishing and maintaining the records required by the ABLE Commission and the Oklahoma Tax Commission and for collecting such tax for the benefit of the state, if such tax is timely reported and remitted; provided, the discount provided by this section shall be limited to Three Thousand Three Hundred Dollars (\$3,300.00) per reporting period for each licensed distributor and any amount in excess of Three Thousand Three Hundred Dollars (\$3,300.00) per reporting period for each licensed distributor shall be retained by the state as an administrative expense and deposited to the General Revenue Fund. If the tax becomes delinquent, the licensed distributor forfeits any claim to the remuneration.

K. The Oklahoma Tax Commission shall, by rule, establish a procedure by which a licensed distributor shall be allowed a credit against subsequent tax liability for damaged bingo faces, U-PIK-EM bingo game sets, ~~breakopen ticket games~~ or charity game equipment upon which the tax required by the Oklahoma Charity Games Act has been paid and by which the distributor shall reimburse the organization which purchased such damaged bingo faces, U-PIK-EM bingo game sets, ~~breakopen ticket games~~ or charity game equipment for the tax paid by such organization.

L. The Oklahoma Tax Commission shall devise only such tax reporting forms as necessary for tax collection pursuant to the Oklahoma Charity Games Act and shall promulgate and enforce only such rules as are necessary to provide for the collection, remitting and verification of payment of taxes by distributors as required by this section.

M. The Oklahoma Tax Commission shall have the authority to enter the licensed premises of any licensee to verify compliance with the taxation provisions of the Oklahoma Charity Games Act.

SECTION 7. AMENDATORY 3A O.S. 2001, Section 426, is amended to read as follows:

Section 426. A. On and after January 1, 1993, any bingo faces, or U-PIK-EM bingo game sets, ~~or breakopen ticket cards~~ that are not purchased from a licensed distributor are declared to be contraband, unless such items are:

1. Purchased by an exempt organization, exempt hospital, nursing home, residential care facility, senior citizens' center, retirement center or convalescent facility;

2. Purchased by a federally recognized Indian tribe or nation;
or

3. Sold or given by a licensed organization to another licensed organization, an exempt organization, or exempt hospital, nursing home, residential care facility, senior citizens' center, retirement

center or convalescent facility, if written permission is obtained from the Director of the ABLE Commission and proper notification is given to the Oklahoma Tax Commission.

B. On and after January 1, 1993, any bingo faces, or U-PIK-EM bingo game sets, ~~or broken ticket cards~~ sold or offered for sale by a business entity which is not a licensed distributor is declared to be contraband.

C. Any bingo faces, or U-PIK-EM bingo game sets, ~~or broken ticket cards~~ which were not in the possession of an organization or business entity on December 31, 1992, on which the taxes have not been paid are declared to be contraband unless the items are being transported through this state from another state to be sold or distributed in another state.

D. On and after January 1, 1993, any bingo faces, or U-PIK-EM bingo game sets, ~~or broken ticket cards~~ in the possession of an organization or business entity which has not been licensed or obtained an exemption pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of this title, shall be declared contraband.

E. Such contraband shall be subject to confiscation, forfeiture, and destruction in the following manner:

1. The Commission, its agent, or the district attorney of the county wherein the alleged contraband is located shall seize any such item and maintain it for safekeeping pending a final adjudication of the legality of the sale or purchase;

2. The Commission, its agent, or the district attorney seizing the alleged contraband shall apply to the district court for an order forfeiting the alleged contraband and directing its destruction;

3. The court clerk shall give the owner of the alleged contraband fourteen (14) calendar days' written notice of the hearing on the request for the order for destruction; and

4. Upon obtaining an order from the court ordering destruction, the Commission or the district attorney shall destroy the contraband in the manner they deem most appropriate.

SECTION 8. AMENDATORY 21 O.S. 2001, Section 966, is amended to read as follows:

Section 966. For the purposes of this act, "punch board" is defined to be any card, board, substance or thing upon or in which is placed or concealed in any manner any number, figure, name, design, character, symbol, picture, substance or thing which may be drawn, uncovered, exposed or removed therefrom by any person paying a thing of value, which number, figure, name, design, character, symbol, picture, substance or any other thing, when drawn, uncovered, exposed or removed therefrom, will stand the person drawing, uncovering, exposing or removing the same to win or lose a thing of value, ~~but shall not include a broken ticket card, as defined in the Oklahoma Charity Games Act.~~

SECTION 9. 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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