

California Gambling Control Commission

Report to the Legislature

Fundraising Effectiveness and Regulation of Remote Caller Bingo

Penal Code Section 326.3(y)



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EXECUTIVE SUMMARY

As required by Penal Code section 326.3(y), this report was prepared by the California Gambling Control Commission (Commission) on the fundraising effectiveness and regulation of remote caller bingo, and other matters that are relevant to the public interest regarding remote caller bingo. The report focuses on the Commission's regulation of the Remote Caller Bingo Program (Program), nonprofit organizations conducting remote caller bingo games, the fundraising effectiveness of these games, proposed legislation to streamline the program (SB 340, Wolk, 2011), and information on other states that have operated similar linked bingo programs.

The Program has been particularly complex, with three separate components under the enabling legislation. While the Commission's regulatory costs were intended to be offset by Program fees, the minimal fee revenues generated have covered only a fraction of the costs associated with the Program. To date, the Program has received loans from the Gambling Control Fund of approximately \$989,000 for the Commission's regulatory costs, with expenditures totaling approximately \$402,000 (the Commission did not expend the full amount of the loans). The Program has only generated fee revenues to the California Bingo Fund of approximately \$61,000, since inception.

The Program also has an outstanding loan balance of approximately \$1.8 million to the Indian Gaming Special Distribution Fund (SDF) for grants to eligible nonprofit organizations that ceased using electronic bingo devices other than card-minding devices as a fundraising tool. Existing law requires nonprofit organizations that conduct remote caller bingo games to pay to the Commission an amount equal to 5 percent of the gross revenues of each remote caller bingo game played until that time as the full advanced amount plus interest on the loan at the rate accruing to moneys in the Pooled Money Investment Account is reimbursed. These SDF loan reimbursement payments from nonprofit organizations have only totaled approximately \$9,000 since inception.

Due to lack of funding and positions to regulate the Program, the Commission discontinued Program regulatory activities on July 1, 2011. To avoid disruption of remote caller bingo games, the Commission extended all remote caller bingo licenses and work permits through May 31, 2012, for those licenses and work permits in effect on June 30, 2011.

Of the 18 nonprofit organizations authorized by the Commission to conduct remote caller bingo games, only eight of these organizations have conducted games. Legislation is pending to attempt to streamline the Program and simplify the requirements for nonprofits to participate in the Program.

Overall, the Program has not been an effective fundraising tool for California nonprofit organizations. Based on limited financial information submitted to the Commission, it is estimated that the Program has generated gross receipts totaling approximately \$181,000 for the 1st through 3rd calendar quarters of 2011, which should have resulted in at least \$69,000 provided to nonprofit organizations conducting remote caller bingo games.

Similar linked bingo programs in other states have not been successful. Only two other states, Michigan and Minnesota, have implemented linked bingo games. Vendors in both

states discontinued these games due to the lack of profitability. While Michigan has a new linked bingo game, it has only generated minimal revenues to nonprofit organizations in fiscal year 2010.

BACKGROUND INFORMATION

Enabling Legislation

SB 1369 (Cedillo, Chapter 748, Statutes of 2008) established the Remote Caller Bingo Act to authorize “remote caller bingo” as a game that would allow specific nonprofit and charitable organizations to use audio and video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to a local bingo ordinance and approved by the Commission. In general, the bill required the Commission to regulate remote caller bingo, including but not limited to, licensure, operation and the development of regulations. The bill also required the Commission to approve equipment used for remote caller bingo, in advance, and to monitor the operation of the transmission and other equipment used for remote caller bingo. The bill also authorized a loan of up to \$500,000 from the Gambling Control Fund to the California Bingo Fund on or after January 1, 2009 for startup costs incurred by the Commission. In addition, the bill included an appropriation of \$5 million to the Charity Bingo Fund from a loan of the accrued interest in the SDF for mitigation payments (grants) to eligible nonprofit organizations. The Commission was required to administer these mitigation payments.

Other bills were also enacted related to the Remote Caller Bingo Act to assist in the implementation of the Program, as follows:

- **AB 334 (Levine, Chapter 734, Statutes of 2008)** – Appropriated up to \$500,000, as determined by order of the Director of Finance, from the California Bingo Fund to the California Gambling Control Commission for use in FY 2008-09 to fund operating, personnel, and other startup costs incurred by the Commission related to the California Remote Caller Bingo Act.
- **SB 126 (Cedillo, Chapter 562, Statutes of 2009)** - Urgency measure that made various technical changes to provisions governing remote caller bingo games and card-minding devices under the Remote Caller Bingo Act.
- **SB 1090 (Cedillo, Chapter 514, Statutes of 2010)** – Expanded the maximum number of remote caller bingo games that charitable organizations can conduct to two days per week (instead of one day per week) and made minor technical changes to the Program. Specifically, this measure allowed charitable organizations to conduct remote caller bingo games up to two days per week and made technical changes to correct obsolete law references, correct the categories of tax exempt organizations listed in the model local ordinance that are qualified to apply for a local bingo license, and provided additional flexibility for local jurisdictions to verify that an applicant is an eligible tax exempt organization.

Legislative Mandate

Penal Code section 326.3(y) requires the Commission to “submit a report to the Legislature, on or before January 1, 2012, on the fundraising effectiveness and regulation of remote caller bingo, and other matters that are relevant to the public interest regarding remote caller bingo.”

Remote Caller Bingo Program Components

The Program has been particularly complex, with three separate components under the enabling legislation.

- 1) The first component required the Commission to regulate the licensure and operation of remote caller bingo, including the development of program regulations. Before an organization can become authorized to conduct remote caller bingo, five steps must be completed:
 - The organization must be recognized by the Commission as an authorized organization;
 - Applications for interim licenses and work permits must be submitted and approved by the Commission;
 - Applicants must submit and obtain approval for the controls, methodology, and standards of play;
 - Applicants must submit a list of all equipment to be used, including any equipment used in the transmission of the game, at least 30 days prior to conducting games; and,
 - Applicants must submit a notice of intent to conduct remote caller bingo games to the Commission at least 30 days in advance. That notice must include the local ordinances for the cities and/or counties where the game will be played, license numbers of persons required to be licensed and other information required by law.

The Commission was required to develop emergency regulations and permanent regulations to implement the Remote Caller Bingo Act. The status of the regulations is below.

- Americans with Disabilities Act (ADA) Accommodation – Emergency Regulations.
- ADA Accommodation – Permanent-Regular Regulations.
- Remote Caller Bingo Individual Licenses & Work Permits. Manufacturer/Distributor Licensing; Organization Recognition – Emergency-Interim Regulations.
- Remote Caller Bingo Individual Licenses & Work Permits; Vendors. Organization Recognition – Permanent-Interim Regulations.

- Remote Caller Bingo Equipment, Requirements and Standards of Game Play, Audits – Emergency Regulations.
 - Card-Minding Devices; Interim Approval – Emergency-Interim Regulations.
- 2) The second component required the Commission to administer mitigation payments (grants) of up to \$5 million to eligible nonprofit organizations that ceased using electronic bingo devices other than card-minding devices as a fundraising tool, and in an effort to ease the transition to remote caller bingo. These grant payments were funded from a loan from the interest on the SDF. A grant of approximately \$1.5 million was issued to one eligible non-profit organization in Sacramento County in FY 2008-09. The application deadline to apply for grants concluded on January 31, 2009. The unencumbered balance of approximately \$3.5 million was reverted to the SDF in the Budget Act of 2010 as an early, partial repayment of the loan from the interest of the SDF. To reimburse the remaining balance on the loan from the SDF, nonprofit organizations that conduct remote caller bingo games are required to pay the Commission an amount equal to 5 percent of the gross revenues of each remote caller bingo game played until the full advanced amount plus interest on the loan is reimbursed.
- 3) The third component of the Program required the Commission to license persons that manufacture, distribute, supply, vend, lease or otherwise provide card-minding devices for bingo (traditional bingo and remote caller bingo). The Commission is also required to approve all card-minding devices in advance, based on specified criteria.

California Constitution and “Traditional” Bingo

In California, traditional bingo is regulated by local jurisdictions. In 1976, California voters approved an amendment to the Constitution specifying that "the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes." [See California Constitution, Article IV, Section 19(c).] The Legislature implemented this constitutional provision by enacting Penal Code Section 326.5. The statute authorizes the playing of bingo where the games are conducted by a specified tax-exempt organization for charitable purposes pursuant to local ordinance. In general, these local ordinances specify limitations of days, locations, and hours of the operation of bingo games. Local governments have the responsibility to regulate and enforce their bingo ordinances. Furthermore, the federal government requires charitable non-profit organizations to file annual returns that are subject to audit.

COMMISSION REGULATION OF THE REMOTE CALLER BINGO PROGRAM

Commission Overview

The Commission has responsibilities related to cardrooms, the third party proposition player services industry, and the Tribal-State Gaming Compacts, in addition to the Program. The Commission regulates the operation, concentration, and supervision of cardrooms, key employees and persons working under work permits, related to the operation of cardrooms in California. Primary responsibilities include issuing licenses and work permits, making determinations of suitability for licensees, ensuring that ineligible or

unqualified or unsuitable persons are not associated with controlled gambling activities and regulating all matters related to cardroom gambling in California. The Commission also has fiduciary, regulatory and administrative responsibilities related to Tribal gaming. Primary responsibilities include: (1) conducting audits to verify Tribal contributions to the SDF, the Indian Gaming Revenue Sharing Trust Fund (RSTF) and Tribal payments to the General Fund; (2) serving as the administrator of the SDF and trustee of the RSTF, including verifying net win and distributing RSTF revenues to authorized Tribes; (3) making determinations of suitability for Tribal key employees, vendors, and financial sources; (4) inspecting gaming devices to confirm that they operate and play in accordance with the manufacturer's specifications and technical standards, and (5) conducting reviews to verify that Tribal Gaming Agencies are complying with Compact provisions to establish internal controls that protect the integrity of their gaming operations.

Status of the Remote Caller Bingo Program

After more than three years of considerable effort to develop and implement a Remote Caller Bingo Program, *this program has not been fiscally viable and the fee revenues associated with the program have not covered the Commission's costs.* While the Legislature, in creating remote caller bingo, recognized a need to provide greater revenues for nonprofit organizations to enable them to fulfill their charitable purposes, it also provided that the program be self-supporting.

Since inception of the Program in FY 2008-09, the Commission's start-up, operating, and personnel costs have been funded from three loans via the Gambling Control Fund. In addition to the loans authorized under AB 334 (Levine, Chapter 734, Statutes of 2008) two additional loans from the Gambling Control Fund were authorized in the Budget Act of 2009 and 2010. To date, the Program has received loans from the Gambling Control Fund of approximately \$989,000 for the Commission's regulatory costs, with expenditures totaling approximately \$402,000 (the Commission did not expend the full amount of the loans). The program has only generated State revenues to the California Bingo Fund of approximately \$61,000, since inception. These revenues are from Program fees paid by non-profit organizations, vendors, and the manufacturers and distributors of card-minding devices, and have not been sufficient to cover the Commission's costs to regulate the program. While the program fees could be raised to attempt to cover the Commission's regulatory costs, this is not a viable option. Requiring the small number of organizations, businesses, and individuals to bear the entire costs of the program would be overly burdensome and inconsistent with the express purpose of the program – to provide nonprofit organizations with an additional method of fundraising to support the essential services they provide.

The Program also has an outstanding loan balance of approximately \$1.8 million to the SDF for grants to eligible nonprofit organizations that ceased using electronic bingo devices other than card-minding devices as a fundraising tool. Existing law, Penal Code section 326.4(d)(2), requires nonprofit organizations that conduct remote caller bingo games to pay to the Commission an amount equal to 5 percent of the gross revenues of each remote caller bingo game played until that time as the full advanced amount plus interest on the loan at the rate accruing to moneys in the Pooled Money Investment

Account is reimbursed. These SDF loan reimbursement payments from nonprofit organizations have only totaled approximately \$9,000 since inception.

The Commission's current funding authority for the Program (via a loan from the Gambling Control Fund) and limited-term positions expired on June 30, 2011. The Governor's Budget for FY 2011-12 included a Budget Change Proposal (BCP) that requested \$104,000 from the California Bingo Fund (via a loan from the Gambling Control Fund) and one position to address workload associated with the Program. During Budget hearings in 2011, the Commission's BCP was denied without prejudice by the Assembly and the Senate.

As a result of the lack of funding and positions to regulate remote caller bingo games, the Commission terminated Program regulatory activities effective July 1, 2011. It is important to note that the Commission's only sources of funding are special funds that are limited to specific purposes. Accordingly, the Commission was no longer legally authorized to perform work related to the Program. To avoid disruption of remote caller bingo games, the Commission on June 16, 2011, extended all remote caller bingo licenses and work permits through May 31, 2012 for those licenses and work permits in effect on June 30, 2011.

NONPROFIT ORGANIZATIONS CONDUCTING REMOTE CALLER BINGO GAMES

Demand for the Program by nonprofit organizations has been relatively weak. This may be attributable, in part, to the requirement for local jurisdictions to adopt an ordinance that specifically authorizes remote caller bingo games and the requirement for nonprofit organizations to comply with various State regulatory requirements included in the enabling legislation.

Overall, the Commission received 36 applications from nonprofit organizations to conduct Remote Caller Bingo games. Eighteen of these organizations were recognized by the Commission as eligible to conduct Remote Caller Bingo games. Of the 36 organizations, 11 had deficient applications and seven withdrew or abandoned their applications.

As of this writing, eight organizations recognized by the Commission are currently conducting remote caller bingo games. The first games commenced in February of 2011. These recognized organizations include:

- Dixon Post No. 208, American Legion
- Ontario Post No. 112, American Legion
- Desert Hot Springs Lodge No. 2639, Benevolent and Protected Order of Elks (B.P.O.E.)
- St. Pius X Catholic Church
- Yucaipa Valley Post 426, American Legion
- Knights of Columbus, Council 4438
- Pomona Charles P. Rowe Post No. 30, American Legion
- Old Baldy Post No. 2085, Veterans of Foreign Wars (Ontario)

It is also noted that a ninth organization, the Yucaipa Lodge No. 2839, B.P.O.E, has been conducting remote caller bingo games according to records submitted to the Commission. This organization has neither applied for, nor been granted, recognition by the Commission to conduct remote caller bingo games. On November 9, 2011, the Commission notified this organization and other stakeholders that the Yucaipa Lodge No. 2839, B.P.O.E. may not legally conduct or participate in remote caller bingo games. The Commission also refunded the \$102.36 SDF loan reimbursement payment received on behalf of this organization.

FUNDRAISING EFFECTIVENESS OF REMOTE CALLER BINGO GAMES

In order to report on the fundraising effectiveness of remote caller bingo, the Commission estimated the gross receipts generated from remote caller bingo games and the minimum gross receipts that should have been provided to nonprofit organizations conducting these games, based on limited financial information submitted to the Commission. An overview of the requirements for the allocation of game receipts pursuant to the Remote Caller Bingo Act follows:

- Penal Code section 326.3(b)(4) requires the receipts of a game (gross receipts) to be used only for charitable purposes, with the disbursements of net receipts of the game to be determined by the organization conducting the game.
- Penal Code section 326.3(m) prohibits an organization authorized to conduct a remote caller bingo game from having overhead costs exceeding 20 percent of “gross sales”, with an exception for one-time, non-recurring capital acquisitions. Overhead costs include, but are not limited to, amounts paid for rent and equipment leasing and the reasonable fees authorized to be paid to personnel employed by the organization conducting a remote caller bingo game. For the purpose of keeping its overhead costs below 20 percent of gross sales, existing law also allows organizations to deduct all or a portion of the fees paid to financial institutions for the use and processing of credit card sales from the amount of the gross revenues awarded for prizes, and prohibits these fees from being deducted from the proceeds retained by the charitable organization.
- Penal Code section 326.3(p) prohibits the value of prizes awarded during the conduct of any remote caller bingo game from exceeding 37 percent of the “gross receipts” for that game.
- Penal Code section 326.4 (d)(2) requires nonprofit organizations that conduct remote caller bingo games to pay the Commission an amount equal to 5 percent of the gross revenues of each remote caller bingo games played until that time as the full advance amount plus interest on the loan from the SDF is reimbursed.

It follows that a minimum of 38 percent of gross receipts would be required to be used for charitable purposes. Note: While the statute refers to “gross sales, “gross revenues”, and “gross receipts”, the Commission has interpreted these terms to have the same meaning.

Based on limited financial information submitted to the Commission, it is estimated that the Program has generated gross receipts totaling approximately \$181,000 for the 1st through 3rd calendar quarters of 2011, which should have resulted in at least \$69,000 provided to nonprofit organizations conducting remote caller bingo games (at least 38 percent of gross receipts). For the past three quarters, nonprofit organizations have made SDF loan reimbursement payments to the Commission totaling approximately \$9,000 based on an amount equal to 5 percent of the gross revenues for remote caller bingo games. The \$69,000 generated to nonprofit organizations is not significant, given the Commission's cost to regulate the Program.

SB 340 (WOLK, 2011)

SB 340, as amended on August 18, 2011, is an urgency measure that would streamline the Remote Caller Bingo Program. The bill would eliminate State licensing requirements, allow the program to be regulated by local jurisdictions (just as traditional bingo is currently regulated), and require nonprofit organizations eligible to conduct remote caller bingo games or management companies contracted by those organizations to register any local bingo license annually with the Department of Justice (Department). The bill would also require the Department to maintain a registry on its Internet Web site of all organizations registered to conduct remote caller bingo and authorize the Department to charge an annual filing fee of \$200 to cover registration and enforcement. In addition, the bill would authorize the Department to audit the books and records of an organization or management company at any time, and to charge a fee sufficient to cover the costs of the audit. The bill is currently located in the Assembly Appropriations Committee and has been held under submission on the Suspense File.

To the extent that legislation is enacted to restructure and streamline this Program as a locally-regulated program at the option of local jurisdictions, this could provide an alternative for nonprofit organizations to continue remote caller bingo games in a more cost-effective manner after the Commission's licenses and work permits expire on May 31, 2012. Legislation could also help ensure that nonprofit organizations continue to make payments of 5 percent of gross revenues from each remote caller bingo game to reimburse the loan to the SDF. This could help to reduce the outstanding balance owed to the SDF.

OTHER STATES' INFORMATION

Michigan

The Michigan Bureau of State Lottery, Charitable Gaming Division (Lottery) regulates traditional bingo and linked bingo. The Lottery also regulates raffles, millionaire parties (Las Vegas style fundraising events for nonprofit organizations) and charity game tickets (pull-tabs sold by licensed organizations). Specified nonprofit organizations are eligible to apply for bingo licenses and vendors are also required to meet extensive requirements. The Lottery also requires bingo halls that rent or lease buildings to conduct bingo and suppliers that conduct bingo games to be licensed.

Michigan currently offers two different types of linked bingo games for licensed nonprofit organizations: (1) Michigan Progressive Jackpot Electronically Linked Bingo Games (ELBG) and (2) Michigan Progressive Jackpot Bingo Manually Linked Bingo Games (MLBG). Both of these games have progressive jackpots, meaning that the jackpots grow each day until there is a winner.

Under ELBG, multiple licensed nonprofit organizations participate in electronically linked bingo games (similar to California's Remote Caller Bingo games), but with a common, progressive jackpot prize. In order to conduct electronically linked Bingo games, an operator (business that provides the equipment and services) must be authorized by the Lottery and submit a management plan. The Michigan Lottery Charitable Gaming Directive No. 3.08.04 (December 16, 2008) includes an extensive list of terms and conditions for nonprofit participants and operators.

Under MLBG, up to ten licensed nonprofit organizations can play bingo in the same location. The Michigan Lottery Charitable Gaming Directive No. 3.06.03 (September 5, 2007) requires all licensees participating in MLBG to have a current signed contract on file with the Bureau of State Lottery that meets specified terms and conditions.

It is important to note that Michigan previously offered "Big Money Bingo", an electronically linked bingo game with progressive jackpots. The game was conducted for licensed charities through one operator, Scientific Games, selected by the Lottery, and subject to State parameters. The program operated from 2007 through 2008. According to Lottery staff, the program was discontinued because the program was not profitable for the vendor.

Linked Bingo Prizes and Gross Profits Lottery staff indicate that linked bingo games are not subject to a prize limit, as they are progressive games. In fiscal year 2010, of the revenue collected for linked bingo, 42 percent went towards prizes and 58 percent went towards gross profits for nonprofit organizations and operators. Of the 58 percent, 44 percent of gross profits (approximately 26 percent of total revenues) were allocated to nonprofit organizations and 56 percent (approximately 32 percent of gross profits) were allocated to the operator. Overall, of the 130 nonprofit organizations conducting linked bingo games in fiscal year 2010, these organizations only received gross profits of \$267,000 (approximately \$2,054 per charity), while the operator received \$346,000 in gross profits.

Minnesota

The Minnesota Gambling Control Board (Board) regulates traditional bingo, in addition to raffles, pull-tabs, paddlewheels (a manually operated vertical wheel marked off into sections containing numbers or number/symbol combinations that, after being spun, uses a pointer to indicate the winning number on the wheel) and tipboards (a board, placard, or other device containing a seal that conceals the winning number or symbol and contains a sign-up line(s)). Eligible nonprofit organizations that are licensed by the Board can participate in any of the above activities.

It is important to note that the Board previously regulated linked bingo (similar to California's Remote Caller Bingo Program). Minnesota's linked bingo program began in 2008. The provider, MegaBingo, closed their linked bingo operation in Minnesota effective May 5, 2011. According to Board staff, this game was discontinued because the game was not profitable to the provider.

Illinois

The Illinois Department of Revenue (Department) regulates traditional bingo and charitable gaming by licensed nonprofit organizations (Las Vegas style fundraising events). Pull-tabs and jar games are also permitted to be sold by licensed nonprofit organizations. The Department also approves requests for tax exemption from charitable organizations.

Legislation was introduced in 2011 by Senator Antonio Munoz to amend the Illinois Bingo License and Tax Act to authorize remote caller bingo games subject to a license by the Illinois Department of Revenue. The bill's provisions are similar to California's Remote Caller Bingo Act. While the bill passed out of the Senate in 2011 and moved to the Assembly, it was re-referred to the Assembly Rules Committee on May 31, 2011. According to Illinois Senate and Assembly legislative staff, there may not be enough interest in the bill to generate sufficient votes for passage. As Illinois will begin the second year of a two-year legislative session in 2012, SB 1297 is a "two-year" bill.

CONCLUSION

The Remote Caller Bingo Program has been a complex regulatory program that has not been fiscally viable. The Commission's costs to implement and regulate the Program have greatly exceeded the minimal fee revenues. There are also significant outstanding loans to the Gambling Control Fund and the SDF. The Commission discontinued Program regulatory activities on July 1, 2011 due to lack of funding and positions. The Commission-issued licenses and work permits related to the program will expire on May 31, 2012.

Similar linked bingo programs in Michigan and Minnesota have not been successful and were terminated by the vendors because they were not fiscally viable. While the Michigan Lottery currently offers a new form of an electronically linked bingo game similar to California's Program, this game has generated minimal revenues for nonprofit organizations in fiscal year 2010.

As it relates to California nonprofit organizations, the Program has not been an effective fundraising tool and has only generated minimal revenues for a small number of organizations. The Commission recognizes the important role that nonprofit organizations play and the increased demand on services provided by these organizations, especially given the current economic environment. To the extent that the Program can be restructured and streamlined as a locally-regulated program similar to traditional bingo, this could provide an alternative for nonprofit organizations to continue the Program in a more cost-effective manner.