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Alcohol, Drugs, and Gaming

C-3 Brief History of Bingo in Kansas

1971 Legislative Attempt to Legalize Bingo in Kansas

Section 3, Article 15 of the *Kansas Constitution* originally prohibited all types of lotteries in the state, including bingo.

The first attempt at legalizing bingo in Kansas occurred in 1971 when the Legislature amended KSA 21-4302, a criminal statute defining terms pertaining to gambling, in an attempt to legalize certain bingo games in the state. The amendment sought to legalize the games by excluding bingo games from the statutory definition of what constitutes a “bet” when conducted by tax-exempt organizations under section 503(c) of the Internal Revenue Code of 1954 and also excluded money paid by participants in such bingo games from the statutory definition of “consideration.”

In 1972, the Kansas Supreme Court in *State v. Nelson* considered the 1971 amendments to KSA 21-4302 in terms of Article 15, Section 3 of the *Kansas Constitution*. The Supreme Court reaffirmed the definition of lottery having three essential elements: consideration, prize, and chance. The Court found the definition of “consideration,” as amended by the Legislature in 1971 to exclude money paid by participants in bingo games, was in conflict with the *Constitution* and, therefore, void.

1974 Constitutional Amendment

There was recognition among legislators of an existing, widespread practice among churches and other charitable organizations of raising money by conducting bingo games. There also was awareness, reinforced by the Supreme Court decision in 1972, that such games were in violation of the constitutional prohibition on lotteries. The 1974 Legislature passed SCR 72 authorizing a vote of the people on the issue of whether to allow bingo for charitable purposes. At that time, all lotteries were prohibited by the *Kansas Constitution*, so the resolution asked the voters to allow a single exception to the constitutional prohibition on lotteries.

At the general election on November 5, 1974, the voters approved the constitutional amendment, 499,701 to 210,052. The new constitutional provision delegated power to the Legislature to implement the new

gaming activity by regulating, licensing, and taxing bingo games, and ensuring such gaming was conducted only by nonprofit religious, charitable, fraternal, educational, and veterans' organizations.

Such legislation was passed in 1975, when the Governor signed into law SB 116. The Bingo Act, became effective on April 1, 1975 in KSA 79-4701 *et seq.* The new legislation defined bingo and adopted restrictions on how, when, and where bingo games could be conducted. Regulation of bingo games and collection of the bingo enforcement tax was delegated to the Director of Taxation in the Kansas Department of Revenue.

1976 Legislative Study of Bingo

The first legislative study of bingo took place in 1976 when a Special Bingo Investigation Study Committee, established by the Legislative Coordinating Council, was directed to study, and investigate into bingo in Kansas. The Special Committee was granted authority to exercise compulsory process in conducting its legislative investigation. Much of the information in this brief history of bingo is taken from the December 1976, *Report on Kansas Legislative Interim Studies to the 1977 Legislature* (Part II of two Parts). Details of the interim study may be found in that publication.

Since 1976, the Legislature revised the regulation of bingo through a series of amendments enacted in 1977, 1980, 1982, 1984, 1989, and 1993.

1993 Legislative Attempt to Expand Bingo Definition

The 1993 Legislature passed a bill in an attempt to authorize "instant bingo," in addition to traditional bingo games. The Attorney General challenged the validity of the legislation, claiming it violated the general prohibition on lotteries. The District Court ruled the addition of instant bingo was constitutional. The Kansas Supreme Court disagreed, and in *Stephan v. Parrish* held that any definitions adopted by the Legislature must bear a reasonable and recognizable similarity to the definitions of bingo provided by counsel and those existing in the common understanding of the

people of Kansas. The Court found "instant bingo" failed this test, and ruled the amendment allowing "instant bingo" was unconstitutional because it exceeded the power granted to the legislature to define games of bingo.

1995 Constitutional Amendment

In 1995, in response to the *Stephan v. Parrish* litigation, the Legislature passed SCR 1602 authorizing a vote of the people on the issue of whether to amend Section 3a of Article 15 of the *Kansas Constitution* to legalize the sale of "instant bingo," or pull tabs, by bingo licensees. The voters approved the amendment, and the 1996 Legislature subsequently made conforming changes in the bingo statutes, defining instant bingo and adding related regulatory provisions.

Current Law

What is Currently Allowed?

The current text of Article 15, Sec. 3(a) of the *Kansas Constitution* reads as follows:

Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas the legislature may regulate, license, and tax the operation or conduct of games of 'bingo,' as defined by law, by bona fide nonprofit religious, charitable, fraternal, educational, and veterans' organizations.

What are Nonprofit, Religious, Charitable, Fraternal, Educational, and Veteran's Organizations?

The organizations permitted to conduct bingo games are defined as follows.

Nonprofit religious organization—any organization, church, body of communicants, or group, which

- Gathered in common membership for mutual support and edification in piety,

worship, and religious observances, or a society of individuals united for religious purposes at a definite place;

- Has no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization;
- Maintains an established place of worship within this state;
- Has a regular schedule of services or meetings at least on a weekly basis;
- Has been determined by the administrator to be organized and created as a *bona fide* religious organization; and
- Either has been:
 - Exempted from the payment of federal income taxes as provided by section 501(c)(3) or section 501(d) of the federal internal revenue code of 1986, as amended; or
 - Determined to be organized and operated as a *bona fide* nonprofit religious organization by the administrator.

Nonprofit charitable organization—any organization that is organized and operated for:

- The relief of poverty, distress, or other condition of public concern within this state;
- Financially supporting the activities of a charitable organization as defined in paragraph (1); or
- Conferring direct benefits on the community at large; and
- Of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization;
- Has been determined by the administrator to be organized and operated as a *bona fide* charitable organization; and
- Either has been:
 - Exempted from the payment of federal income taxes as provided by sections 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) and 501(c)(7) of the federal internal revenue code of 1986, as amended; or
 - Determined to be organized and operated as a *bona fide* nonprofit

charitable organization by the administrator.

Nonprofit fraternal organization—any organization within this state that:

- Exists for the common benefit, brotherhood, or other interests of its members;
- Is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose within this state; and
- Either has been:
 - Determined by the administrator to be organized and operated as a *bona fide* fraternal organization and exempted from the payment of federal income taxes as provided by section 501(c)(8) or section 501(c)(10) of the federal Internal Revenue Code of 1986, as amended; or
 - Determined to be organized and operated as a *bona fide* nonprofit fraternal organization by the administrator.

Nonprofit educational organization—any public or private elementary or secondary school or institution of higher education that:

- Has been determined by the administrator to be organized and operated as a *bona fide* educational organization; and
- Either has been:
 - Exempted from the payment of federal income taxes as provided by section 501(c)(3) of the federal internal revenue code of 1986, as amended; or
 - Determined to be organized and operated as a *bona fide* nonprofit educational organization by the administrator.

Nonprofit veterans' organization—any organization within this state or any branch, lodge, or chapter of a national or state organization within this state, the membership of which consists exclusively of:

- Individuals who qualify for membership because they were or are members of the armed services or forces of the United States; or
- An auxiliary unit or society of such a nonprofit veterans' organization the membership of which consists exclusively of individuals who were or are members of the armed services or forces of the United States, or are cadets, or are spouses, widows or widowers of individuals who were or are members of the armed services or forces of the United States;
- No part of the net earnings inures to the benefit of any private shareholder or individual member of such organization; and
- Either has been:
 - Determined by the administrator to be organized and operated as a *bona fide* veterans' organization and exempted from the payment of federal income taxes as provided by section 501(c)(4) or 501(c)(19) of the federal internal revenue code of 1986, as amended; or
 - Determined to be organized and operated as a *bona fide* nonprofit veterans' organization by the administrator.

What is Bingo?

"Bingo" is defined in statute to mean the games of call bingo and instant bingo.

Call Bingo

In current law, "call bingo" is defined as game in which:

- Each player pays a charge;
 - A prize or prizes are awarded to the winner or winners;
 - Each player receives one or more cards or faces; and
 - Each player covers the squares on each card or face as the operator of such game announces a number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the squares.
- The winner of each game is the player or players first covering properly a predetermined and announced pattern of squares upon the card or face being used by such player or players.
- The statute further specifies that call bingo includes any regular, special, mini, and progressive game of bingo, but does not include any game utilizing an electronic or computerized card system.

Instant Bingo

"Instant bingo" differs from call bingo in several ways, and is defined in statute as a game in which:

- Each player pays a charge;
- A prize or prizes are awarded to the winner or winners;
- Each player receives one or more disposable pull-tab or break-open tickets that accord a player an opportunity to win something of value by opening or detaching the paper covering from the back of the ticket to reveal a set of numbers, letters, symbols, or configurations, or any combination thereof.
- Each instant bingo game:
 - Is conducted by a licensee under this act;
 - Is in the presence of the players; and
 - Does not utilize any dice, normal playing cards, instant ticket with a removable latex covering or slot machines.
- Winners of instant bingo are determined by:
 - A combination of letters, numbers, or symbols determined and posted prior to the sale of instant bingo tickets;
 - Matching a letter, number, or symbol under a tab of an instant bingo ticket with the winning letter, number, or

- symbol in a designated call game of bingo during the same session; or
- Matching a letter, number, or symbol under a tab of an instant bingo ticket with one or more letters, numbers, or symbols announced in, or as a continuation of, a designated call game of bingo during the same session.
- As with call bingo, the statutory definition of instant bingo specifically does not include any game utilizing electronically generated or computer-generated tickets.

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