

Lynxx Update – What We Know

Fraternal and non-profit organizations licensed by the Arizona Department of Revenue can legally operate bingo games with certain regulations on the manner of play. A.R.S. §§ 5-401 *et seq.* Because Senate Bill 1180 (SB1180), passed during the 2017 legislative session and signed into law by Governor Ducey on May 1, 2017, the way bingo may be played in the State has changed.

The Department of Revenue (DOR) is designated as the "licensing authority" for bingo in Arizona. ARS §5-402. The DOR is also in charge of enforcement of the terms and provisions of this article. The Arizona Department of Gaming (DOG) may investigate violations of section 13-3306 (Possession of a Gambling Device) that occurs on non-Indian lands in this state and may cooperate with appropriate law enforcement authorities and prosecutorial agencies in the investigation and prosecution of these violations. ARS §5-602(J). However, the DOG has no enforcement power concerning bingo and pronouncements by that Department regarding bingo have no force in law. *Ibid.*

Effective August 12, 2017 A.R.S. § 5-402 is amended by SB1180. The bill requires that bingo licensees may employ “technological aids for bingo games that function only as electronic substitutes for bingo cards.” The bill requires that two of these technological aids must be reserved for players with disabilities for the first 15 minutes of any bingo session. If no requests are made for the use of these technological aids within fifteen minutes after the scheduled start of a game of bingo, these reserved technological aids may be made available to any other player. SB1180, Paragraph Y(1).

SB1180 also allows licensees to rent, rather than own, these technological aids. The bill allows contractors to be involved in conducting certain licensee’s bingo games and, in particular, assist with the operation of the technological aids (substitute bingo cards). Finally, SB1180 is intended to allow Arizona licensees to comply with the Americans with Disabilities Act and the Arizona Civil Rights Act A.R.S. §41-1401 *et. seq.* To comply with these two laws, licensees must provide reasonable accommodations to prevent hiring discrimination.

The DOG is concerned that bingo licensees and third persons might misinterpret SB1180, and in particular the language on technologic aids, as a change that permits the operation of electronic bingo machines. Lynxx Gaming, for one, has NOT misinterpreted SB1180. Lynxx has requested that the DOG provide it a definition of what it considers a “bingo gambling device” or an “electronic bingo machine” that would be prohibited under the law, but the DOG has yet to respond. Instead, on August 9, 2017 it published a misleading Notice to Bingo Licensees re. SB1180 on its website. On August 11 the DOR published essentially the same letter, releasing it to the public. Strangely enough, the definition of a bingo gambling device is nowhere to be found in the Arizona Revised Statutes.

In a telephone conversation with Gaming’s Lt. Darren Baldwin on August 10, 2017, Lynxx Gaming’s President, Greg Mullally, clarified that their letter was not intended to imply that Lynxx equipment was not legal. Instead, it was designed to warn bingo operators that they must perform due diligence and assure that any equipment they might utilize complies with the law.

While the possession of a bingo gambling device (whatever that may be) is a crime in Arizona, it is only a criminal offense if a person knowingly possesses any implement, machine, paraphernalia, equipment or other thing that the person knows or has reason to know is used or intended to be used in violation of the bingo statute. Since the Lynxx equipment is specifically designed to be compliant with SB1180, it is not illegal under the law. It should be noted that while the DOG claims it can provide guidance as to whether a particular technological aid qualifies as an electronic substitute for a bingo card, the DOG has never seen, never asked to see nor has made any attempt to determine what Lynxx Gaming is offering to fraternal and non-profit organization. Lynxx still has an open invitation to the DOR and the DOG to examine not only its equipment but to comment on its operations in general.

According to DOR regulations, Licensees must operate bingo in the manner Arizona law requires. "Bingo" in Arizona is a multi-player game where balls or other objects marked with numbers or symbols are drawn from a receptacle, the results called out to players, and winners determined by obtaining a designated pattern or sequence of the drawn numbers or symbols on a card. A.A.C. R-15-7-201 and 207-213. Lynxx Gaming equipment does not allow for "single player" games. The Lynxx system draws objects marked with numbers from a receptacle, calls out the numbers to players, and winners of the bingo game are determined when a player obtains a designated pattern or sequence of the drawn numbers or symbols on a card.

The DOR regulations further specify that legal games of bingo must take place at a licensee's single location with all players, the licensee's supervisor, the bingo equipment, the person drawing numbers and the person calling numbers physically present on the premises where the game is actually conducted. A.R.S. §§ 5-401(23), 403.01, 404(F), 405(A)(4) and (B) and 406(R), (S) and (V). Lynxx agrees and finds nothing in these regulations objectionable or in violation of the provisions of the ADA or the Arizona Civil Rights Act.

The DOG letter of August 9 states that bingo games must use equipment (to include the marked objects in the receptacle) owned by the licensee. This contradicts the second paragraph of its own guidance letter and is incorrect. According to SB1180 and the DOG's own letter, "the bill allows licensees to rent, rather than own, these technological aids".

Lynxx Gaming and the DOR agree that Bingo cards (devices of play provided by a licensee to a player before the start of the game that bear parallel rows of spaces containing numbers or symbols) must be sold on the premises where the game is played. A.A.C. R15-7-201 and 215 (A). No cards provided by Lynxx technological aids may be purchased off premise.

The Department of Gaming's guidance letter states that "bingo winners must be verified by a bingo worker in the presence of a disinterested player". A.A.C. R15-7-213(A). This statement is misleading as it quotes only part of the regulation. In reality, a bingo winner must be verified by a bingo worker in the presence of a disinterested player only after a player has announced "bingo" during a game. The regulation is silent as to what is necessary if a player is not required to announce "bingo" verbally. As a matter of fact, SB1180 allows announcements may be made electronically.

The Department of Gaming's guidance letter states that at the time a winner is announced, any player shall be entitled to call for a verification, to take place in the immediate presence of the supervisor and in full view of the player, of numbers drawn and balls or objects remaining in the receptacle. A.R.S. § 406(U). Lynxx equipment is designed to enable such verification.

The DOG is wrong when they say that in a legal bingo game players must "mark their own cards in search of a winning pattern. Apparently the author of the DOG's letter forgot that both the DOR and the DOG currently allows electronic devices that automatically daub on behalf of the player.

In their summation, the DOG states that Bingo gambling devices and other technologic aids that replicate the on-site, physical game of bingo rather than just replace bingo cards in a live game, no matter what they are called and including those that contain or share random number generators or are linked to players or bingo games in other locations, do not and cannot meet all of the above described requirements of Arizona law.

Electronic bingo cards are already approved by the DOR and share a random number generator. Lynxx supplied bingo games **will** meet the Arizona requirements.

In conclusion, the DOG letter may be worrisome to many of you who have allowed Lynxx Gaming to make presentations to your Post or organization. Because of that, Lynxx will prove, whether through legal action or otherwise, that all equipment that it provides in the State of Arizona is fully compliant to all laws and provide you with the written legal decisions from a Court of competent jurisdiction if that indeed becomes necessary. Following are the pertinent Arizona laws and regulations pertaining to bingo.

Arizona Bingo Law Analysis - Statutory Provisions

1. Persons licensed by the Arizona Department of Revenue can legally operate bingo games with certain regulations on the manner of play ARS §§5-401 *et seq.*
2. The Department of Revenue (DOR) is designated as the "licensing authority" for bingo in Arizona. The DOR is also in charge of enforcement of the terms and provisions of this article. ARS §5-402.
3. The Arizona Department of Gaming (DOG) may investigate violations of ARS §13-3306 (Possession of a Gambling Device) that occurs on non-Indian lands in this state and may cooperate with appropriate law enforcement authorities and prosecutorial agencies in the investigation and prosecution of these violations. ARS §5-602(J).
4. The DOG has no enforcement power concerning bingo and pronouncements by that Department have no force in law. *Ibid.*
5. Effective August 12, 2017 A.R.S. § 5-402 is amended by SB1180.
6. SB1180 is intended to allow Arizona licensees to comply with the Americans with Disabilities Act and the Arizona Civil Rights Act A.R.S. §41-1401 *et. seq.*
7. Bingo is "regulated gambling". A.R.S. §13-3301. Regulated gambling means:
 - (i) It is operated and controlled in accordance with a statute, rule or order of this state or of the United States (emphasis added).

- (ii) All federal, state or local taxes, fees and charges in lieu of taxes have been paid by the authorized person or entity on any activity arising out of or in connection with the gambling.
 - (iii) If conducted by an organization which is exempt from taxation of income under section 43-1201, the organization's records are open to public inspection.
8. To comply with Federal law (ADA) and the Arizona Civil rights Act bingo licensees must make reasonable accommodations to make sure disabled people may be employed. This includes providing alternate equipment which might allow a disabled person to conduct the game.
 9. ARS §5-401 Definitions states "Equipment" means the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, the public address system, and all other articles essential to the operation, conduct and playing of bingo (emphasis added).¹
 10. A person commits possession of a bingo gambling device if the person knowingly possesses any implement, machine, paraphernalia, equipment or other thing that the person knows or has reason to know is used or intended to be used in violation of this chapter. ARS §13-3306(B).
 11. Possession of a bingo gambling device shall not be the basis for a violation of section 13-3303, 13-3304 or 13-3307. ARS §13-3306(C).

Department of Revenue Regulations

1. “Bingo” means a game of chance in which a prize is awarded to a player who obtains a designated pattern or sequence of numbers or symbols on a card that are the same as the pattern or sequence of numbers or symbols selected at random. When placed in quotation marks, “bingo” means the designated pattern or sequence of numbers or symbols needed to win a bingo game. R-15-7-201. Definitions
2. “Card” means a device of bingo play such as a sheet of paper..... that bears parallel rows of spaces with each space containing a number or symbol. R-15-7-201. Definitions.

NOTE - Because the definition of “card” contains the words “such as”, it could be anything, including a video representation of a group of numbers on a grid of some size. Additionally, a card is not required to be 5 squares x 5 squares.

3. “Receptacle” means a container, such as a blower and cage.... R-15-7-201. Definitions

NOTE – Because the definition of “receptacle” contains the words “such as”, it could be anything, including a disc or flash drive connected to a computer. By definition, a receptacle is an object or space used to store something.

Provisions of SB 1180

¹ Certain peripheral electronic equipment is needed to operate technological aids for bingo games that take the place of bingo cards. These may include virtual ball draw servers, computers, routers, and WiFi signal boosters.

1. SB1180 legalizes “technological aids for bingo games that function only as electronic substitutes for bingo cards”.
2. SB1180 allows for the participation of “contractors” in bingo games.
3. SB1180 allows contractors to supply technological aids (rented or leased) to licensees.