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HOUSE BILL NO. 1027

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 58.1-4004, 58.1-4006, 58.1-4007, 58.1-4010, 58.1-4014, and 58.1-4020.1 of the Code of Virginia, relating to the State Lottery Law; penalty.

Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-4004, 58.1-4006, 58.1-4007, 58.1-4010, 58.1-4014, and 58.1-4020.1 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-4004. Membership of Board; appointment; terms; vacancies; removal; expenses.

A. The Board shall consist of five members, all of whom shall be citizens and residents of this Commonwealth and all of whom shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by a majority of the members elected to each house of the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. Prior to the appointment of any Board members, the Governor shall consider the political affiliation and the geographic residence of the Board members. The members shall be appointed for terms of five years; except that of the members first appointed, one shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year, each commencing as of the date of his appointment. The members shall annually elect one member as chairman of the Board.

B. Any vacancy on the Board occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original term.

C. The members of the Board shall receive such compensation as provided in § 2.2-2813, shall be subject to the requirements of such section, and shall be allowed reasonable expenses incurred in the performance of their official duties.

D. Before entering upon the discharge of their duties, the members of the Board shall take an oath that they will faithfully and honestly execute the duties of the office during their continuance therein and they shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of their duties. The premium on such bond shall be paid out of the State Lottery Fund.

§ 58.1-4006. Powers of the Director.

A. The Director shall supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations promulgated hereunder.

B. The Director shall also:

1. Employ such deputy directors, professional, technical and clerical assistants, and other employees as may be required to carry out the functions and duties of the Department.

2. Act as secretary and executive officer of the Board.

3. Require bond from licensed agents as provided in subsection D of § 58.1-4009 and Department employees with access to Department funds or lottery funds, in such amount as provided in the rules and regulations of the Board. The Director may also require bond from other employees as he deems necessary.

4. Confer ~~at least once every month~~ regularly, but not less than four times each year, with the Board on the operation and administration of the lottery; make available for inspection by the Board, upon request, all books, records, files, and other information and documents of the Department; and advise the Board and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery.

5. Suspend, revoke or refuse to renew any license issued pursuant to this chapter or the rules and regulations adopted hereunder.

6. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the lottery and into ~~interstate~~ *multijurisdictional* lottery contracts with other states, *countries or provinces*. A contract awarded or entered into by the Director shall not be assigned by the holder thereof except by specific approval of the Director.

7. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery revenues, prize disbursements and other expenses for the preceding month.

8. Report monthly to the Governor, the Secretary of Finance and the Chairmen of the Senate Finance Committee, House Finance Committee and House Appropriations Committee the total lottery revenues,

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HB1027

59 prize disbursements and other expenses for the preceding month, and make an annual report, which shall
60 include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the
61 Governor and the General Assembly. Such annual report shall also include such recommendations for
62 changes in this chapter as the Director and Board deem necessary or desirable.

63 9. Report immediately to the Governor and the General Assembly any matters which require
64 immediate changes in the laws of this Commonwealth in order to prevent abuses and evasions of this
65 chapter or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection
66 with the administration or operation of the lottery.

67 10. Notify prize winners and appropriate state and federal agencies of the payment of prizes in
68 excess of \$600 in the manner required by the lottery rules and regulations.

69 11. Provide for the withholding of the applicable amount of state and federal income tax of persons
70 claiming a prize for a winning ticket in excess of \$5,001.

71 C. The Director and the director of security or investigators appointed by the Director shall be vested
72 with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department
73 and to investigate violations of the statutes and regulations that the Director is required to enforce.

74 § 58.1-4007. Powers of the Board.

75 A. The Board shall have the power to adopt regulations governing the establishment and operation of
76 a lottery. The regulations governing the establishment and operation of the lottery shall be promulgated
77 by the Board after consultation with the Director. Such regulations shall be in accordance with the
78 Administrative Process Act (§ 2.2-4000 et seq.). The regulations shall provide for all matters necessary
79 or desirable for the efficient, honest and economical operation and administration of the lottery and for
80 the convenience of the purchasers of tickets or shares, and the holders of winning tickets or shares. The
81 regulations, which may be amended, repealed or supplemented as necessary, shall include, but not be
82 limited to, the following:

83 1. The type or types of lottery to be conducted *and the type or types of gaming activity that will*
84 *qualify as a lottery.*

85 2. The price or prices of tickets or shares in the lottery; however, all such sales shall be for cash.

86 3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the
87 public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes
88 and (ii) returned to the Commonwealth as net revenues.

89 4. The manner of selecting the winning tickets or shares.

90 5. The manner of payment of prizes to the holders of winning tickets or shares.

91 6. The frequency of the drawings or selections of winning tickets or shares without limitation.

92 7. Without limitation as to number, the type or types of locations at which tickets or shares may be
93 sold.

94 8. The method to be used in selling tickets or shares.

95 9. The advertisement of the lottery in accordance with the provisions of subsection E of § 58.1-4022.

96 10. The licensing of agents to sell tickets or shares who will best serve the public convenience and
97 promote the sale of tickets or shares. No person under the age of eighteen shall be licensed as an agent.

98 A licensed agent may employ a person who is sixteen years of age or older to sell or otherwise vend
99 tickets at the agent's place of business so long as the employee is supervised in the selling or vending of

100 tickets by the manager or supervisor in charge at the location where the tickets are being sold.
101 Employment of such person shall be in compliance with Chapter 5 (§ 40.1-78 et seq.) of Title 40.1.

102 11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to
103 provide for the adequate availability of tickets or shares to prospective buyers and for the convenience
104 of the public.

105 12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other
106 sources and establishment of the amount of the special reserve fund as provided in § 58.1-4022 of this
107 chapter.

108 13. Such other matters necessary or desirable for the efficient and economical operation and
109 administration of the lottery.

110 The Department shall not be subject to the provisions of Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2;
111 however, the Board shall also promulgate regulations, after consultation with the Director, relative to
112 departmental procurement which include standards of ethics for procurement consistent with the
113 provisions of Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 and which ensure that
114 departmental procurement will be based on competitive principles.

115 The Board shall have the power to advise and recommend, but shall have no power to veto or
116 modify administrative decisions of the Director. However, the Board shall have the power to accept,
117 modify or reject any revenue projections before such projections are forwarded to the Governor.

118 B. The Board shall carry on a continuous study and investigation of the lottery throughout the
119 Commonwealth to:

120 1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the

administration and operation of the lottery and any evasions of such provisions.

2. Formulate, with the Director, recommendations for changes in this chapter and the regulations promulgated hereunder to prevent such abuses and evasions.

3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge for organized crime and illegal gambling.

4. Ensure that this law and the regulations of the Board are in such form and are so administered as to serve the true purpose of this chapter.

C. The Board shall make a continuous study and investigation of (i) the operation and the administration of similar laws which may be in effect in other states or countries, (ii) any literature on the subject which may be published or available, (iii) any federal laws which may affect the operation of the lottery, and (iv) the reaction of Virginia citizens to the potential features of the lottery with a view to recommending or effecting changes that will serve the purpose of this chapter.

D. The Board shall hear and decide an appeal of any denial by the Director of the licensing or revocation of a license of a lottery agent pursuant to subdivision 10 of subsection A of this section and subdivision 5 of subsection B of § 58.1-4006 of this chapter.

E. The Board shall have the authority to initiate procedures for the planning, acquisition, and construction of capital projects as set forth in Article 4 (§ 2.2-1129 et seq.) of Chapter 11 and Article 3 (§ 2.2-1819 et seq.) of Chapter 18 of Title 2.2.

§ 58.1-4010. Authority of persons licensed as lottery sales agents; annual fee.

A. Notwithstanding any other provision of law, any person licensed as provided in this chapter is hereby authorized to act as a lottery sales agent.

B. The rules and regulations of the lottery shall provide for an *initial licensing fee and an annual license review fee* to be collected from each lottery sales agent. Such fee, as promulgated by rule and regulation of the Board, shall be designed to recover all or such portion of the installation and annual operational costs borne by the Department in providing services to the agent.

§ 58.1-4014. Price of tickets or shares; who may sell; penalty.

A. No person shall sell a ticket or share at any price or at any location other than that fixed by rules and regulations of the Department. No person other than a licensed lottery sales agent or his employee shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another person over the age of eighteen years as a gift.

B. Any person convicted of violating this section shall be guilty of a Class 1 misdemeanor.

C. *Any person who steals or otherwise unlawfully converts to his own or another's use a lottery ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the face amount of a lottery ticket, prize, share, or portion thereof shall be deemed to be its value.*

§ 58.1-4020.1. Voluntary assignment of lottery prizes or pledge as collateral for a loan; requirements for the assignees and lenders.

A. Lottery prizes, payable in installments over a period of time, excluding prizes payable for the winner's life, may be voluntarily assigned or pledged as collateral for a loan, in whole or in part, by the person entitled to such installments, by written contract affirming that the requirements of this section have been met and endorsed by written order of a court of competent jurisdiction after a hearing. The order shall specify the name, address and social security number or tax identification number of the assignee or lender and shall specifically describe the payments be assigned or pledged as collateral by date and gross pre-tax amount. *The Department shall be given notice of any hearing held pursuant to this section and shall have the right to appear and participate in such hearing. Venue for hearings held pursuant to this section shall be in the Circuit Court of the City of Richmond.*

The rate charged for any such assignment or loan shall not exceed 15 percent.

The contract shall:

1. Be signed by the assignor and the assignee or the lender and the borrower, and the assignor or borrower shall affirm the assignment or loan has been voluntarily executed.

2. Include or be accompanied by a sworn statement attesting that the assignor or borrower (i) is of sound mind and not acting under duress; (ii) has been advised in writing by the assignee or lender to seek independent legal counsel and independent financial counsel concerning the implications of the assignment or loan, including the tax consequences, and has either received such advice or knowingly waived such advice in writing; (iii) understands that he is relinquishing or limiting his rights to receive the lottery proceeds; and (iv) has received from the Virginia Lottery, in response to a written request therefor, confirmation of the assignee's or lender's registration with the Virginia Lottery in accordance with subsection E of this section.

3. Include a disclosure statement setting forth (i) the amounts assigned or loaned; (ii) the dates such amounts are payable; (iii) the purchase price paid for the assignment or loan; (iv) the rate of discount to present value, assuming daily compounding and funding on the contract date; (v) the amount of any fees associated with the assignment or loan and by whom such fees are payable; and (vi) the tax

182 identification number of the assignee.

183 4. Expressly state that the assignor or borrower has three business days after signing the contract to
184 cancel the assignment or loan.

185 5. Expressly state that the assignee or lender is eligible to purchase, share or receive prizes of the
186 Virginia Lottery pursuant to §§ 58.1-4015, 58.1-4016 and subsection A of § 58.1-4019, and that the
187 Virginia Lottery has complied with subsection B of § 58.1-4019 in that the original prizewinner is (or if
188 deceased, was) a natural person if and to the extent that the prize was awarded on or after the effective
189 date pursuant to subsection B of § 58.1-4019.

190 6. Expressly state that no amounts assigned or loaned are subject to setoff pursuant to Article 21
191 (§ 58.1-520 et seq.) of Chapter 3 of this title.

192 B. The Commonwealth, the Virginia Lottery and any employee or representative of either shall be
193 indemnified and held harmless upon payment of amounts due as set forth in the court order.

194 C. The Lottery may establish a reasonable fee to process the assignments provided for in this section
195 and to receive, review and file the registration required by subsection E and confirm compliance with
196 the registration requirements. The fee shall be reflective of the direct and indirect costs of processing the
197 assignments or registrations.

198 D. Notwithstanding the provisions of this section, the Commonwealth and the Virginia Lottery shall
199 not accept any assignment if either of the following has occurred:

200 1. Federal law provides that the right to assign lottery proceeds is deemed receipt of income in the
201 year the lottery prize is won for all installment lottery prize winners. "Federal law" includes statutory
202 law, rulings of courts of competent jurisdiction, and published rulings by the Internal Revenue Service.

203 2. State law provides that the right to assign lottery proceeds is deemed receipt of income in the year
204 the lottery prize is won for all installment lottery prize winners. "State law" includes statutory law,
205 rulings of courts of competent jurisdiction, and published rulings by the Department of Taxation.

206 E. An assignee, prospective assignee, lender or prospective lender shall not make any representation
207 in any written or oral communications with a lottery winner that implies that the assignee, prospective
208 assignee, lender or prospective lender is associated with or an agent of the Virginia Lottery. Every
209 prospective assignee or prospective lender shall register with the Virginia Lottery, prior to contracting
210 for any assignment or loan pursuant to this section. The registration shall include (i) the assignee's or
211 lender's standard information packet or materials given or sent to prospective assignees or borrowers, (ii)
212 the assignee's or lender's standard form of agreement, (iii) the assignee's or lender's federal tax
213 identification number, and (iv) where applicable, the assignee's or lender's most recent public financial
214 statement. *The Director may deny, suspend or revoke a registration for a violation of this chapter or for
215 such other reason as the Board, by regulation, may establish.*

216 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
217 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
218 **be determined for periods of imprisonment in state adult correctional facilities and is cannot be**
219 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**