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SENATE BILL NO. 223

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 3, 2014)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 18.2-340.16, 18.2-340.19, 18.2-340.22, and 18.2-340.33 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-340.28:2, relating to Board for Charitable Gaming; authorization of electronic poker games for qualified organizations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-340.16, 18.2-340.19, 18.2-340.22, and 18.2-340.33 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-340.28:2 as follows:

§ 18.2-340.16. Definitions.

As used in this article, unless the context requires a different meaning:

"Bingo" means a specific game of chance played with (i) individual cards having randomly numbered squares ranging from one to ~~seventy-five~~ 75, (ii) Department-approved electronic devices that display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Department-approved cards, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random.

"Board" means the Charitable Gaming Board created pursuant to § 2.2-2455.

"Bona fide member" means an individual who participates in activities of a qualified organization other than such organization's charitable gaming activities.

"Charitable gaming" or "charitable games" means those raffles, *electronic poker games*, and games of chance explicitly authorized by this article.

"Charitable gaming supplies" includes bingo cards or sheets, devices for selecting bingo numbers, instant bingo cards, pull-tab cards and seal cards, *electronic gaming machines*, and any other equipment or product manufactured for or intended to be used in the conduct of charitable games. However for the purposes of this article, charitable gaming supplies shall not include items incidental to the conduct of charitable gaming such as markers, wands or tape.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to, (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets, (ii) calling bingo games, (iii) distributing prizes, and (iv) any other services provided by volunteer workers.

"Department" means the Department of Agriculture and Consumer Services.

"*Electronic poker*" means the game of poker when offered and simulated by an *electronic gaming machine that uses video images and a random number generator and the images projected on the video display of electronic video poker gaming machines are a material component of the game.*

"Fair market rental value" means the rent that a rental property will bring when offered for lease by a lessor who desires to lease the property but is not obligated to do so and leased by a lessee under no necessity of leasing.

"Gaming expenses" means prizes, supplies, costs of publicizing gaming activities, audit and administration or permit fees, and a portion of the rent, utilities, accounting and legal fees and such other reasonable and proper expenses as are directly incurred for the conduct of charitable gaming.

"Gross receipts" means the total amount of money generated by an organization from charitable gaming before the deduction of expenses, including prizes.

"Instant bingo," "pull tabs," or "seal cards" means specific games of chance played by the random selection of one or more individually prepacked cards, including Department-approved electronic versions thereof, with winners being determined by the preprinted or predetermined appearance of concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses and may include the use of a seal card which conceals one or more numbers or symbols that have been designated in advance as prize winners. Such cards may be dispensed by electronic or mechanical equipment.

"Jackpot" means a bingo game that the organization has designated on its game program as a jackpot game in which the prize amount is greater than \$100.

"Landlord" means any person or his agent, firm, association, organization, partnership, or corporation, employee, or immediate family member thereof, which owns and leases, or leases any premises devoted in whole or in part to the conduct of bingo games, and any person residing in the same household as a

60 landlord.

61 "Management" means the provision of oversight of a gaming operation, which may include, but is
62 not limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling,
63 submitting and maintaining required records and financial reports, and ensuring that all aspects of the
64 operation are in compliance with all applicable statutes and regulations.

65 "Operation" means the activities associated with production of a charitable gaming activity, which
66 may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming;
67 (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the
68 organization's management.

69 "Organization" means any one of the following:

70 1. A volunteer fire department or rescue squad or auxiliary unit thereof ~~which~~ *that* has been
71 recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision
72 where the volunteer fire department or rescue squad is located as being a part of the safety program of
73 such political subdivision;

74 2. An organization operated exclusively for religious, charitable, community or educational purposes;

75 3. An athletic association or booster club or a band booster club established solely to raise funds for
76 school-sponsored athletic or band activities for a public school or private school accredited pursuant to
77 § 22.1-19 or to provide scholarships to students attending such school;

78 4. An association of war veterans or auxiliary units thereof organized in the United States;

79 5. A fraternal association or corporation operating under the lodge system;

80 6. A local chamber of commerce; or

81 7. Any other nonprofit organization that raises funds by conducting raffles that generate annual gross
82 receipts of \$40,000 or less, provided such gross receipts from the raffle, less expenses and prizes, are
83 used exclusively for charitable, educational, religious or community purposes.

84 *"Poker game" means any of several card games in which a player bets that the value of his hand is*
85 *greater than that of the hands held by other players, in which each subsequent player must either equal*
86 *or raise the bet or drop out, and in which the player holding the highest hand at the end of the betting*
87 *wins the prize, stake, or other consideration or thing of value.*

88 "Qualified organization" means any organization to which a valid permit has been issued by the
89 Department to conduct charitable gaming or any organization that is exempt pursuant to § 18.2-340.23.

90 "Raffle" means a lottery in which the prize is won by (i) a random drawing of the name or
91 prearranged number of one or more persons purchasing chances or (ii) a random contest in which the
92 winning name or preassigned number of one or more persons purchasing chances is determined by a
93 race involving inanimate objects floating on a body of water, commonly referred to as a "duck race."

94 "Reasonable and proper business expenses" means business expenses actually incurred by a qualified
95 organization in the conduct of charitable gaming and not otherwise allowed under this article or under
96 Board regulations on real estate and personal property tax payments, travel expenses, payments of
97 utilities and trash collection services, legal and accounting fees, costs of business furniture, fixtures and
98 office equipment and costs of acquisition, maintenance, repair or construction of an organization's real
99 property. For the purpose of this definition, salaries and wages of employees whose primary
100 responsibility is to provide services for the principal benefit of an organization's members shall not
101 qualify as a business expense. However, payments made pursuant to § 51.1-1204 to the Volunteer
102 Firefighters' and Rescue Squad Workers' Service Award Fund shall be deemed a reasonable and proper
103 business expense.

104 "Supplier" means any person who offers to sell, sells or otherwise provides charitable gaming
105 supplies to any qualified organization.

106 **§ 18.2-340.19. Regulations of the Board.**

107 A. The Board shall adopt regulations ~~which~~ *that*:

108 1. Require, as a condition of receiving a permit, that the applicant use a predetermined percentage of
109 its gross receipts for (i) those lawful religious, charitable, community or educational purposes for which
110 the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition,
111 construction, maintenance or repair of any interest in real property involved in the operation of the
112 organization and used for lawful religious, charitable, community or educational purposes. The
113 regulation may provide for a graduated scale of percentages of gross receipts to be used in the foregoing
114 manner based upon factors the Board finds appropriate to and consistent with the purpose of charitable
115 gaming.

116 2. Specify the conditions under which a complete list of the organization's members who participate
117 in the management, operation or conduct of charitable gaming may be required in order for the Board to
118 ascertain the percentage of Virginia residents in accordance with subdivision A 3 of § 18.2-340.24.

119 Membership lists furnished to the Board or Department in accordance with this subdivision shall not
120 be a matter of public record and shall be exempt from disclosure under the provisions of the Freedom of
121 Information Act (§ 2.2-3700 et seq.).

3. Prescribe fees for processing applications for charitable gaming permits. Such fees may reflect the nature and extent of the charitable gaming activity proposed to be conducted.

4. Establish requirements for the audit of all reports required in accordance with § 18.2-340.30.

5. Define electronic and mechanical equipment used in the conduct of charitable gaming. Board regulations shall include capacity for such equipment to provide full automatic daubing as numbers are called. For the purposes of this subdivision, electronic or mechanical equipment for instant bingo, pull tabs, or seal cards shall include such equipment that displays facsimiles of instant bingo, pull tabs, or seal cards and are used solely for the purpose of dispensing or opening such paper or electronic cards, or both; but shall not include (i) devices operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to rest, or (ii) other similar devices that display flashing lights or illuminations, or bells, whistles, or other sounds, solely intended to entice players to play.

6. Prescribe the conditions under which a qualified organization may (i) provide food and nonalcoholic beverages to its members who participate in the management, operation or conduct of bingo; (ii) permit members who participate in the management, operation or conduct of bingo to play bingo; and (iii) subject to the provisions of subdivision 13 of § 18.2-340.33, permit nonmembers to participate in the conduct of bingo so long as the nonmembers are under the direct supervision of a bona fide member of the organization during the bingo game.

7. Prescribe the conditions under which a qualified organization may sell raffle tickets for a raffle drawing that will be held outside the Commonwealth pursuant to subsection B of § 18.2-340.26.

8. Prescribe the conditions under which persons who are bona fide members of a qualified organization or a child, above the age of 13 years, of a bona fide member of such organization may participate in the conduct or operation of bingo games.

9. Prescribe the conditions under which a person below the age of 18 years may play bingo, provided such person is accompanied by his parent or legal guardian.

10. Require all qualified organizations that are subject to Board regulations to post in a conspicuous place in every place where charitable gaming is conducted a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers.

11. Prescribe the conditions under which a qualified organization may manage, operate, or conduct electronic poker games.

B. In addition to the powers and duties granted pursuant to § 2.2-2456 and this article, the Board may, by regulation, approve variations to the card formats for bingo games provided such variations result in bingo games that are conducted in a manner consistent with the provisions of this article. Board-approved variations may include, but are not limited to, bingo games commonly referred to as player selection games and 90-number bingo.

§ 18.2-340.22. Only raffles, bingo, instant bingo games, and poker games permitted; prizes not gaming contracts.

A. This article permits qualified organizations to conduct raffles, bingo and instant bingo games, *and electronic poker games*. All games not explicitly authorized by this article or Board regulations adopted in accordance with § 18.2-340.18 are prohibited.

B. The award of any prize money for any charitable game shall not be deemed to be part of any gaming contract within the purview of § 11-14.

C. Nothing in this article shall prohibit an organization from using the State Lottery Department's Pick-3 number or any number or other designation selected by the State Lottery Department in connection with any lottery, as the basis for determining the winner of a raffle.

§ 18.2-340.28:2. Conduct of electronic poker games by certain qualified organizations.

A. *A qualified organization that has been conducting regular bingo games for at least 36 months pursuant to a valid permit issued by the Department is authorized to conduct electronic poker games at any time under the following conditions:*

1. The electronic poker gaming is conducted at the same location designated in the permit for regular bingo games;

2. The location is owned by the qualified organization; and

3. The location is not operated on a for-profit basis.

B. *A qualified organization shall accept only cash in payment of any charges or assessments for participation in any electronic poker game.*

C. *No qualified organization or any person on the premises shall extend lines of credit or accept any credit or debit card or other electronic fund transfer in payment of any charges or assessments for players to participate in electronic poker games.*

183 *D. No qualified organization shall allow any individual less than 18 years of age to participate in an*
184 *electronic poker game.*

185 *E. No hand of any electronic poker game shall allow a bet in excess of \$10.*

186 *F. Nothing in this section shall be construed to authorize a qualified organization to allow poker*
187 *card games or to conduct poker tournaments.*

188 **§ 18.2-340.33. Prohibited practices.**

189 In addition to those other practices prohibited by this article, the following acts or practices are
190 prohibited:

191 1. No part of the gross receipts derived by a qualified organization may be used for any purpose
192 other than (i) reasonable and proper gaming expenses, (ii) reasonable and proper business expenses, (iii)
193 those lawful religious, charitable, community or educational purposes for which the organization is
194 specifically chartered or organized, and (iv) expenses relating to the acquisition, construction,
195 maintenance, or repair of any interest in the real property involved in the operation of the organization
196 and used for lawful religious, charitable, community or educational purposes. For the purposes of clause
197 (iv), such expenses may include the expenses of a corporation formed for the purpose of serving as the
198 real estate holding entity of a qualified organization, provided (a) such holding entity is qualified as a
199 tax exempt organization under § 501(c) of the Internal Revenue Code and (b) the membership of the
200 qualified organization is identical to such holding entity.

201 2. Except as provided in § 18.2-340.34:1, no qualified organization shall enter into a contract with or
202 otherwise employ for compensation any person for the purpose of organizing, managing, or conducting
203 any charitable games. However, organizations composed of or for deaf or blind persons may use a part
204 of their gross receipts for costs associated with providing clerical assistance in the management and
205 operation but not the conduct of charitable gaming.

206 The provisions of this subdivision shall not prohibit the joint operation of bingo games held in
207 accordance with § 18.2-340.29.

208 3. No person shall pay or receive for use of any premises devoted, in whole or in part, to the
209 conduct of any charitable games, any consideration in excess of the current fair market rental value of
210 such property. Fair market rental value consideration shall not be based upon or determined by reference
211 to a percentage of the proceeds derived from the operation of any charitable games or to the number of
212 people in attendance at such charitable games.

213 4. No building or other premises shall be utilized in whole or in part for the purpose of conducting
214 charitable gaming more frequently than two calendar days in any one calendar week. However, no
215 building or other premises owned by (i) a qualified organization which is exempt from taxation pursuant
216 to § 501(c) of the Internal Revenue Code or (ii) any county, city or town shall be utilized in whole or in
217 part for the purpose of conducting bingo games more frequently than four calendar days in any one
218 calendar week.

219 The provisions of this subdivision shall not apply to the playing of bingo games pursuant to a special
220 permit issued in accordance with § 18.2-340.27.

221 5. No person shall participate in the management or operation of any charitable game unless such
222 person is and, for a period of at least 30 days immediately preceding such participation, has been a bona
223 fide member of the organization. For any organization that is not composed of members, a person who
224 is not a bona fide member may volunteer in the conduct of a charitable game as long as that person is
225 directly supervised by a bona fide official member of the organization.

226 The provisions of this subdivision shall not apply to (i) persons employed as clerical assistants by
227 qualified organizations composed of or for deaf or blind persons; (ii) employees of a corporate sponsor
228 of a qualified organization, provided such employees' participation is limited to the management,
229 operation or conduct of no more than one raffle per year; (iii) the spouse or family member of any such
230 bona fide member of a qualified organization provided at least one bona fide member is present; or (iv)
231 persons employed by a qualified organization authorized to sell pull tabs or seal cards in accordance
232 with § 18.2-340.16, provided (a) such sales are conducted by no more than two on-duty employees, (b)
233 such employees receive no compensation for or based on the sale of the pull tabs or seal cards, and (c)
234 such sales are conducted in the private social quarters of the organization.

235 6. No person shall receive any remuneration for participating in the management, operation or
236 conduct of any charitable game, except that:

237 a. Persons employed by organizations composed of or for deaf or blind persons may receive
238 remuneration not to exceed \$30 per event for providing clerical assistance in the management and
239 operation but not the conduct of charitable games only for such organizations;

240 b. Persons under the age of 19 who sell raffle tickets for a qualified organization to raise funds for
241 youth activities in which they participate may receive nonmonetary incentive awards or prizes from the
242 organization;

243 c. Remuneration may be paid to off-duty law-enforcement officers from the jurisdiction in which
244 such bingo games are played for providing uniformed security for such bingo games even if such officer

is a member of the sponsoring organization, provided the remuneration paid to such member is in accordance with off-duty law-enforcement personnel work policies approved by the local law-enforcement official and further provided that such member is not otherwise engaged in the management, operation or conduct of the bingo games of that organization, or to private security services businesses licensed pursuant to § 9.1-139 providing uniformed security for such bingo games, provided that employees of such businesses shall not otherwise be involved in the management, operation, or conduct of the bingo games of that organization;

d. A member of a qualified organization lawfully participating in the management, operation or conduct of a bingo game may be provided food and nonalcoholic beverages by such organization for on-premises consumption during the bingo game provided the food and beverages are provided in accordance with Board regulations; and

e. Remuneration may be paid to bingo managers or callers who have a current registration certificate issued by the Department in accordance with § 18.2-340.34:1, or who are exempt from such registration requirement. Such remuneration shall not exceed \$100 per session.

7. No landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for consideration any bingo supplies, including, but not limited to, bingo cards, instant bingo cards, or other game pieces; or (iii) require as a condition of the lease or by contract that a particular manufacturer, distributor or supplier of bingo supplies or equipment be used by the organization.

The provisions of this subdivision shall not apply to any qualified organization conducting bingo games on its own behalf at premises owned by it.

8. No qualified organization shall enter into any contract with or otherwise employ or compensate any member of the organization on account of the sale of bingo supplies or equipment.

9. No organization shall award any bingo prize money or any merchandise valued in excess of the following amounts:

a. No bingo door prize shall exceed \$50 for a single door prize or \$250 in cumulative door prizes in any one session;

b. No regular bingo or special bingo game prize shall exceed \$100;

c. No instant bingo, pull tab, or seal card prize for a single card shall exceed \$599; and

d. No bingo jackpot of any nature whatsoever shall exceed \$1,000, nor shall the total amount of bingo jackpot prizes awarded in any one session exceed \$1,000. Proceeds from the sale of bingo cards and the sheets used for bingo jackpot games shall be accounted for separately from the bingo cards or sheets used for any other bingo games; and

e. *No electronic poker game prize shall exceed \$100.*

10. The provisions of subdivision 9 shall not apply to:

Any progressive bingo game, in which (a) a regular or special prize, not to exceed \$100, is awarded on the basis of predetermined numbers or patterns selected at random and (b) a progressive prize, not to exceed \$500 for the initial progressive prize and \$5,000 for the maximum progressive prize, is awarded if the predetermined numbers or patterns are covered when a certain number of numbers is called, provided (i) there are no more than six such games per session per organization, (ii) the amount of increase of the progressive prize per session is no more than \$100, (iii) the bingo cards or sheets used in such games are sold separately from the bingo cards or sheets used for any other bingo games, (iv) the organization separately accounts for the proceeds from such sale, and (v) such games are otherwise operated in accordance with the Department's rules of play.

11. No organization shall award any raffle prize valued at more than \$100,000.

The provisions of this subdivision shall not apply to a raffle conducted no more than once per calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501(c) of the Internal Revenue Code for a prize consisting of a lot improved by a residential dwelling where 100 percent of the moneys received from such a raffle, less deductions for the fair market value for the cost of acquisition of the land and materials, are donated to lawful religious, charitable, community, or educational organizations specifically chartered or organized under the laws of the Commonwealth and qualified as a § 501(c) tax-exempt organization.

12. No qualified organization composed of or for deaf or blind persons which employs a person not a member to provide clerical assistance in the management and operation but not the conduct of any charitable games shall conduct such games unless it has in force fidelity insurance, as defined in § 38.2-120, written by an insurer licensed to do business in the Commonwealth.

13. No person shall participate in the management or operation of any charitable game if he has ever been convicted of any felony or if he has been convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years. No person shall participate in the conduct of any charitable game if, within the preceding 10 years, he has been convicted of any felony or if, within the preceding five years he has been convicted of any misdemeanor involving fraud, theft, or financial

306 crimes. In addition, no person shall participate in the management, operation or conduct of any
307 charitable game if that person, within the preceding five years, has participated in the management,
308 operation, or conduct of any charitable game which was found by the Department or a court of
309 competent jurisdiction to have been operated in violation of state law, local ordinance or Board
310 regulation.

311 14. Qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 shall not
312 circumvent any restrictions and prohibitions which would otherwise apply if a single organization were
313 conducting such games. These restrictions and prohibitions shall include, but not be limited to, the
314 frequency with which bingo games may be held, the value of merchandise or money awarded as prizes,
315 or any other practice prohibited under this section.

316 15. A qualified organization shall not purchase any charitable gaming supplies for use in the
317 Commonwealth from any person who is not currently registered with the Department as a supplier
318 pursuant to § 18.2-340.34.

319 16. Unless otherwise permitted in this article, no part of an organization's charitable gaming gross
320 receipts shall be used for an organization's social or recreational activities.