

1996 RECONVENED SESSION

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SB156ER

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 18.2-340.16, 18.2-340.19, 18.2-340.24, 18.2-340.33, 18.2-340.34, 18.2-340.37, 18.2-340.38, and 58.1-3 of the Code of Virginia, relating to the Virginia Charitable Gaming Commission; conduct of charitable gaming; penalties.

[S 156]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 18.2-340.16, 18.2-340.19, 18.2-340.24, 18.2-340.33, 18.2-340.34, 18.2-340.37, 18.2-340.38, and 58.1-3 of the Code of Virginia are amended and reenacted 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 individual cards having randomly numbered squares ranging from one to seventy-five, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random. Such cards shall have five columns headed respectively by the letters B.I.N.G.O., with each column having five randomly numbered squares, except the center column which shall contain one free space.

"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 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 any other equipment or product manufactured for or intended to be used in the conduct of charitable games.

"Commission" means the Charitable Gaming Commission.

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

"Instant bingo" means a specific game of chance played by the random selection of one or more individually prepacked cards, made completely of paper or paper products, with winners being determined by the preprinted 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, exclusive of a "winner-take-all" bingo game, in which (i) all numbers on the card are covered, each number being selected at random, and with no more than one free space and (ii) the prize amount is greater than \$100.

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

"Organization" means any one of the following:

- 1. A voluntary fire department or rescue squad or auxiliary unit thereof which has been recognized by an ordinance or resolution of the political subdivision where the voluntary fire department or rescue squad is located as being a part of the safety program of such political subdivision;
2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States; or
4. A fraternal association or corporation operating under the lodge system.

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

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

For the purpose of this article, "raffle" shall include the use of individually prepackaged cards made completely of paper or paper products, with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses, such cards being commonly referred to as "pull tabs." Such cards may be dispensed by electronic or

57 *mechanical equipment.*

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

60 § 18.2-340.19. Regulations of the Commission.

61 The Commission shall adopt regulations which:

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

70 2. Require the organization to have at least fifty percent of its membership consist of residents of the
71 Commonwealth and specify the conditions under which a complete list of the organization's membership
72 may be required in order for the Commission to ascertain the percentage of Virginia residents; however,
73 if an organization (i) does not consist of bona fide members and (ii) is exempt under § 501 (c) (3) of
74 the United States Internal Revenue Code, the Commission shall exempt such organizations from the
75 regulations adopted pursuant to this subdivision.

76 Membership lists furnished to the Commission in accordance with this subdivision shall not be a
77 matter of public record and shall be exempt from disclosure under the provisions of the Freedom of
78 Information Act (§ 2.1-340 et seq.).

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

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

82 5. *Define electronic and mechanical equipment used in the conduct of charitable gaming.*

83 § 18.2-340.24. Eligibility for permit; exceptions; where valid.

84 A. To be eligible for a permit to conduct charitable gaming, an organization shall:

85 1. Have been in existence and met on a regular basis in the county, city or town or in a county, city
86 or town adjacent to the county, city or town wherein the organization proposes to conduct charitable
87 gaming for a period of at least three years immediately prior to applying for a permit.

88 The three-year residency requirement shall not apply (i) to any lodge or chapter of a national or
89 international fraternal order or ~~to~~ of a national or international civic organization which is exempt under
90 § 501 (c) (3) of the United States Internal Revenue Code and which has a lodge or chapter holding a
91 charitable gaming permit issued under the provisions of this article anywhere within the Commonwealth;
92 (ii) to booster clubs which have been operating for less than three years and which have been
93 established solely to raise funds for school-sponsored activities in public schools which are less than
94 three years old; (iii) to recently established volunteer fire and rescue companies or departments, after
95 county, city or town approval; or (iv) to an organization which relocates its meeting place on a
96 permanent basis from one jurisdiction to another, complies with the requirements of subdivision 2 of this
97 section, and was the holder of a valid permit at the time of its relocation.

98 2. Be operating currently and have always been operated as a nonprofit organization.

99 B. Any organization whose gross receipts from all charitable gaming exceeds or can be expected to
100 exceed \$75,000 in any calendar year shall have been granted tax-exempt status pursuant to § 501 (c) of
101 the United States Internal Revenue Code. At the same time tax-exempt status is sought from the Internal
102 Revenue Service, the same documentation may be filed with the Commission for an interim certification
103 of tax-exempt status. If such documentation is filed, the Commission may, after reviewing such
104 documentation it deems necessary, issue its determination of tax-exempt status within sixty days of
105 receipt of such documentation. The Commission may charge a reasonable fee, not to exceed \$500. This
106 interim certification of tax-exempt status shall be valid until the Internal Revenue Service issues its
107 determination of tax-exempt status, or for eighteen months, whichever is earlier.

108 C. A permit shall be valid only for the locations designated in the permit.

109 § 18.2-340.33 Prohibited practices.

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

112 1. No part of the gross receipts derived by a qualified organization may be used for any purpose
113 other than (i) reasonable and proper operating costs, (ii) publicizing the time and date of charitable
114 gaming, (iii) prizes, (iv) those lawful religious, charitable, community or educational purposes for which
115 the organization is specifically chartered or organized, and (v) expenses relating to the acquisition,
116 construction, maintenance, or repair of any interest in the real property involved in the operation of the
117 organization and used for lawful religious, charitable, community or educational purposes.

118 2. No qualified organization shall enter into a contract with, or otherwise employ for compensation
119 any person for the purpose of organizing, managing, or conducting any charitable games. However,
120 organizations composed of or for deaf or blind persons may use a part of their gross receipts for costs
121 associated with providing clerical assistance in the conduct of charitable gaming.

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

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

129 4. No building or other premises shall be utilized in whole or in part for the purpose of conducting
130 bingo games more frequently than two calendar days in any one calendar week. However, no building
131 or other premises owned by (i) a qualified organization ~~and qualified as a tax-exempt organization which~~
132 *is exempt from taxation* pursuant to § 501 (c) of the Internal Revenue Code or (ii) any county, city or
133 town shall be utilized in whole or in part for the purpose of conducting bingo games more frequently
134 than four calendar days in any one calendar week.

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

137 5. No person shall participate in the management, operation or conduct of any charitable game unless
138 such person is and, for a period of at least ninety days immediately preceding such participation, has
139 been a bona fide member of the organization; however, the provisions of this subdivision shall not apply
140 to (i) persons employed as clerical assistants by qualified organizations composed of or for deaf or blind
141 persons; (ii) employees of a corporate sponsor of a qualified organization, provided such employees'
142 participation is limited to the management, operation or conduct of no more than one raffle per year; or
143 (iii) the spouse of any such bona fide member of a qualified organization provided at least one bona
144 fide member is present.

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

147 a. Persons employed by organizations composed of or for deaf or blind persons may receive
148 remuneration not to exceed thirty dollars per event for providing clerical assistance in the conduct of
149 charitable games only for such organizations; ~~and~~

150 b. Persons under the age of nineteen who sell raffle tickets for a qualified organization to raise funds
151 for youth activities in which they participate may receive nonmonetary incentive awards or prizes from
152 the organization; *and*

153 c. *Remuneration may be paid to off-duty law-enforcement officers from the jurisdiction in which such*
154 *bingo games are played for providing uniformed security for such bingo games even if such officer is a*
155 *member of the sponsoring organization, provided the remuneration paid to such member is in*
156 *accordance with off-duty law-enforcement personnel work policies approved by the local*
157 *law-enforcement official and further provided that such member is not otherwise engaged in the*
158 *management, operation or conduct of the bingo games of that organization.*

159 7. No landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the
160 conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for
161 consideration any bingo supplies, including, but not limited to, bingo cards, instant bingo cards, markers,
162 or other game pieces; or (iii) require as a condition of the lease or by contract that a particular
163 manufacturer, distributor or supplier of bingo supplies or equipment be used by the organization. If
164 equipment or services are included by a landlord in any lease or contract, the lease or contract shall
165 itemize the amount attributable to the rent of the premises, equipment, and each service to be provided
166 by the landlord.

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

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

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

- 173 a. No bingo door prize shall exceed \$25;
- 174 b. No regular bingo or special bingo game prize shall exceed \$100;
- 175 c. No instant bingo prize for a single card shall exceed \$500; and
- 176 d. No bingo jackpot of any nature whatsoever shall exceed \$1,000, nor shall the total amount of
177 bingo jackpot prizes awarded in any one calendar day exceed \$1,000.

178 The provisions of this subdivision shall not apply to any bingo game in which all the gross receipts

179 from players for that game are paid as prize money back to the players provided there is no more than
180 one such game per calendar day of play and the prize money from any such game does not exceed
181 \$1,000, such games being commonly referred to as "winner-take-all" games.

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

183 The provisions of this subdivision shall not apply to (i) a raffle conducted no more than once per
184 calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501 (c) (3)
185 of the Internal Revenue Code for a prize consisting of a lot improved by a residential dwelling where
186 100 percent of the moneys received from such a raffle, less deductions for the fair market value for the
187 cost of acquisition of the land and materials, are donated to lawful religious, charitable, community, or
188 educational organizations specifically chartered or organized under the laws of the Commonwealth and
189 qualified as a § 501 (c) (3) tax-exempt organization or (ii) pull-tab devices when played as permitted in
190 § 18.2-340.26, which prize award for a single card shall not exceed \$500.

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

195 12. No person shall participate in the management, operation or conduct of any charitable game if,
196 within the preceding five years, he has been convicted of a felony or crime of moral turpitude. In
197 addition, no person shall participate in the management, operation or conduct of any charitable game if
198 that person, within the preceding five years, has participated in the management, operation, or conduct
199 of any charitable game which was found by the Commission or a court of competent jurisdiction to
200 have been operated in violation of state law, local ordinance or Commission regulation.

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

206 14. A qualified organization shall not purchase any charitable gaming supplies for use in this
207 Commonwealth from any person who is not currently registered with the Commission as a supplier
208 pursuant to § 18.2-340.34.

209 § 18.2-340.34 Suppliers of charitable gaming supplies; registration; qualification; suspension,
210 revocation or refusal to renew certificate; maintenance and production of records.

211 A. No person shall offer to sell, sell or otherwise provide charitable gaming supplies to any qualified
212 organization unless and until such person has made application for and has been issued a registration
213 certificate by the Commission. An application for registration shall be made on forms prescribed by the
214 Commission and shall be accompanied by a fee in the amount of \$500. Each registration certificate shall
215 remain valid for a period of one year from the date of issuance. Application for renewal of a registration
216 certificate shall be accompanied by a fee in the amount of \$500 and shall be made on forms prescribed
217 by the Commission.

218 B. The Commission shall have authority to prescribe by regulation reasonable criteria consistent with
219 the provisions of this article for the registration of suppliers. The Commission may refuse to register any
220 supplier who has, or which has any officer, director, partner, or owner who has (i) been convicted of or
221 pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense
222 which, if committed in the Commonwealth, would be a felony; (ii) been convicted of or pleaded nolo
223 contendere to a crime involving gambling; (iii) had any license, permit, certificate or other authority
224 related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the
225 Commonwealth or in any other jurisdiction; or (iv) *failed to file or has been delinquent in excess of one*
226 *year* in the filing of any tax returns or the payment of any taxes due the Commonwealth.

227 C. The Commission may suspend, revoke or refuse to renew the registration certificate of any
228 supplier for any conduct described in subsection B or for any violation of this article or regulation of
229 the Commission. Before taking any such action, the Commission shall give the supplier a written
230 statement of the grounds upon which it proposes to take such action and an opportunity to be heard.

231 D. Each supplier shall document each sale of charitable gaming supplies to a qualified organization
232 on an invoice which clearly shows (i) the name and address of the qualified organization to which the
233 supplies were sold; (ii) the date of the sale; (iii) the name or form and serial number of each deal of
234 instant bingo cards and pull-tab raffle cards, the ~~quality~~ *quantity* of deals sold and the price per deal
235 paid by the qualified organization; (iv) the serial number of the top sheet in each packet of bingo paper,
236 the serial number for each series of uncollated bingo paper, and the cut, color and quantity of bingo
237 paper sold; and (v) any other information with respect to items of charitable gaming supplies as the
238 Commission may prescribe by regulation. A legible copy of the invoice shall accompany the charitable
239 gaming supplies when delivered to the qualified organization.

240 E. Each supplier shall maintain a legible copy of each invoice required by subsection D for a period
241 of three years from the date of sale. Each supplier shall make such documents immediately available for
242 inspection and copying to any agent or employee of the Commission upon request made during normal
243 business hours. This subsection shall not limit the right of the Commission to require the production of
244 any other documents in the possession of the supplier which relate to its transactions with qualified
245 organizations.

246 § 18.2-340.37. Criminal penalties.

247 A. Any person who violates the provisions of this article *or who willfully and knowingly files, or*
248 *causes to be filed, a false application, report or other document or who willfully and knowingly makes a*
249 *false statement, or causes a false statement to be made, on any application, report or other document*
250 *required to be filed with or made to the Commission shall be guilty of a Class 1 misdemeanor.*

251 B. Each day in violation shall constitute a separate offense.

252 § 18.2-340.38. Transitional provisions.

253 A. In order to implement the statewide regulation of charitable gaming expeditiously, ~~the initial~~ rules
254 and regulations shall be adopted by the Commission but shall not be subject to the Administrative
255 Process Act (§ 9-6.14:1 et seq.) during the first ~~twelve~~ *twenty-four*-month period following the earliest
256 effective date of any portion of this article. Thereafter, all rules and regulations shall fully comply with
257 the provisions of the Administrative Process Act.

258 B. The Commission may issue temporary licenses upon conditions as ~~its~~ *it* deems necessary, subject
259 however to all limitations set forth in this article, for a term which shall not extend beyond one year
260 after the latest effective ~~day~~ *date* of any portion of this article.

261 § 58.1-3. Secrecy of information; penalties.

262 A. Except in accordance with proper judicial order or as otherwise provided by law, the Tax
263 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or
264 revenue officer or employee, or any former officer or employee of any of the aforementioned offices
265 shall not divulge any information acquired by him in the performance of his duties with respect to the
266 transactions, property, including personal property, income or business of any person, firm or
267 corporation. Such prohibition specifically includes any copy of a federal return or federal return
268 information required by Virginia law to be attached to or included in the Virginia return. Any person
269 violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this
270 subsection shall not be applicable, however, to:

- 271 1. Matters required by law to be entered on any public assessment roll or book;
- 272 2. Acts performed or words spoken or published in the line of duty under the law;
- 273 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a
274 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to
275 its study, provided that any such information obtained shall be privileged;
- 276 4. The sales price, date of construction, physical dimensions or characteristics of real property, or to
277 any information required for building permits.

278 B. Nothing contained in this section shall be construed to prohibit the publication of statistics so
279 classified as to prevent the identification of particular reports or returns and the items thereof or the
280 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together
281 with any relevant information which in the opinion of the Department may assist in the collection of
282 such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing
283 whether a person, firm or corporation is licensed to do business in that locality and divulging, upon
284 written request, the name and address of any person, firm or corporation transacting business under a
285 ~~fictitious~~ *fictitious* name.

286 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax
287 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director
288 of finance or other similar collector of county, city or town taxes who, for the performance of his
289 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the
290 Commissioner of the Department of Social Services, upon written request, information on the amount of
291 income reported by persons on their state income tax returns who have applied for public assistance
292 benefits as defined in § 63.1-87; (iii) provide to the Executive Director of the State Education Assistance
293 Authority, upon written request, the names and home addresses of those persons identified by the
294 Authority as having defaulted on loans guaranteed by the Authority; (iv) provide current address
295 information upon request to state agencies and institutions for their confidential use in facilitating the
296 collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use
297 in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v)
298 provide to the Commissioner of the Virginia Employment Commission, after entering into a written
299 agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes
300 and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a

301 written agreement, such tax information as may be necessary to facilitate the collection of state and local
302 taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the
303 State Lottery Department such tax information as may be necessary to identify those lottery ticket
304 retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential
305 use such tax information as may be necessary to facilitate the location of owners of unclaimed property;
306 (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax
307 information as may be necessary to facilitate the collection of taxes and fees administered by the
308 Commission; ~~and~~ (x) provide to the Executive Director of the Potomac and Rappahannock
309 Transportation Commission for its confidential use such tax information as may be necessary to facilitate
310 the collection of the motor vehicle fuel sales tax; *and (xi) provide to the Executive Secretary of the*
311 *Charitable Gaming Commission such tax information as may be necessary to identify those applicants*
312 *for registration as a supplier of charitable gaming supplies who have not filed required returns or who*
313 *owe delinquent taxes.* The Tax Commissioner is further authorized to enter into written agreements with
314 duly constituted tax officials of other states and of the United States for the inspection of tax returns, the
315 making of audits, and the exchange of information relating to any tax administered by the Department
316 of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to
317 the prohibitions and penalties prescribed herein as though he were a tax official.

318 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
319 commissioner of revenue is authorized to provide, upon written request stating the reason for such
320 request, the chief executive officer of any county or city with information furnished to the commissioner
321 of revenue by the Tax Commissioner relating to the name and address of any dealer located within the
322 county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax
323 revenues payable to the county or city. Any person to whom tax information is divulged pursuant to this
324 section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax
325 official.

326 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a
327 motor vehicle local license decal the year, make, and model and any other legal identification
328 information about the particular motor vehicle for which that local license decal is assigned.

329 E. Notwithstanding any other provisions of law, state agencies and any other administrative or
330 regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon
331 written request, the name, address, and social security number of a taxpayer, necessary for the
332 performance of the Commissioner's official duties regarding the administration and enforcement of laws
333 within the jurisdiction of the Department of Taxation. The receipt of information by the Tax
334 Commissioner or his agent which may be deemed taxpayer information shall not relieve the
335 Commissioner of the obligations under this section.

336 F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published
337 any confidential tax document which he knows or has reason to know is a confidential tax document. A
338 confidential tax document is any correspondence, document, or tax return that is prohibited from being
339 divulged by subsection A, B, C, or D of this section. This prohibition shall not apply if such
340 confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing
341 disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2
342 misdemeanor.