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HOUSE BILL NO. 2084

Offered January 14, 1997

A BILL to amend and reenact §§ 18.2-340.15, 18.2-340.16, 18.2-340.18, 18.2-340.19, 18.2-340.24, 18.2-340.27, 18.2-340.28, 18.2-340.30, 18.2-340.32, and 18.2-340.33 of the Code of Virginia, relating to charitable gaming.

Patron—Orrock

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-340.15, 18.2-340.16, 18.2-340.18, 18.2-340.19, 18.2-340.24, 18.2-340.27, 18.2-340.28, 18.2-340.30, 18.2-340.32, and 18.2-340.33 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-340.15. State control of charitable gaming.

A. Charitable gaming as authorized herein shall be permitted in the Commonwealth as a means of funding qualified organizations. The Charitable Gaming Commission is vested with control of all charitable gaming in the Commonwealth, ~~with plenary power to~~ and shall prescribe regulations and conditions, *consistent with the provisions of this article*, under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted.

B. The conduct of any charitable gaming is a privilege which may be granted or denied by the Charitable Gaming Commission or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.

§ 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~~ volunteer 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~~ volunteer 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.

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60 "Qualified organization" means any organization to which a valid permit has been issued by the
61 Commission to conduct charitable gaming or any organization which is exempt pursuant to
62 § 18.2-340.23.

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

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

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

74 § 18.2-340.18. Powers and duties of the Commission.

75 The Commission shall have all powers and duties, *consistent with the provisions of this article*,
76 necessary to ~~carry out the provisions of this article and~~ to exercise the control of charitable gaming as
77 set forth in § 18.2-340.15. Such powers and duties shall include but not be limited to the following:

78 1. The Commission is vested with jurisdiction and supervision over all charitable gaming authorized
79 under the provisions of this article and including all persons that conduct or provide goods, services or
80 premises used in the conduct of charitable gaming. It may employ such persons as are necessary to
81 ensure that charitable gaming is conducted in conformity with the provisions of this article and the
82 regulations of the Commission. The Commission may designate such agents and employees as it deems
83 necessary and appropriate to be vested with like power to enforce the provisions of this article and the
84 criminal laws of the Commonwealth as is vested in the chief law-enforcement officer of any county, city
85 or town.

86 2. The Commission, its agents and employees and any law-enforcement officers charged with the
87 enforcement of charitable gaming laws shall have free access to the offices, facilities or any other place
88 of business of any organization, including any premises devoted in whole or in part to the conduct of
89 charitable gaming. These individuals may enter such places or premises for the purpose of carrying out
90 any duty imposed by this article, securing records required to be maintained by an organization,
91 investigating complaints, or conducting audits.

92 3. The Commission may compel the production of any books, documents, records, or memoranda of
93 any organizations or supplier for the purpose of satisfying itself that this article and its regulations are
94 strictly complied with. In addition, the Commission may require the production of an annual balance
95 sheet and operating statement of any person granted a permit pursuant to the provisions of this article
96 and may require the production of any contract to which such person is or may be a party.

97 4. The Commission shall promulgate regulations under which charitable gaming shall be conducted
98 in the Commonwealth and all such other regulations that it deems necessary and appropriate, *consistent*
99 *with the provisions of the article*, to effect the purposes of this article. Such regulations may include
100 penalties for violations. The regulations shall be subject to the Administrative Process Act (§ 9-6.14:1 et
101 seq.).

102 5. The Commission may issue subpoenas for the attendance of witnesses before it, administer oaths,
103 and compel production of records or other documents and testimony of such witnesses whenever, in the
104 judgment of the Commission, it is necessary to do so for the effectual discharge of its duties.

105 6. The Commission may compel any person holding a permit to file with the Commission such
106 documents, information or data as shall appear to the Commission to be necessary for the performance
107 of its duties.

108 7. The Commission may enter into arrangements with any governmental agency of this or any other
109 state or any locality in the Commonwealth for the purposes of exchanging information or performing
110 any other act to better ensure the proper conduct of charitable gaming.

111 8. The Commission may issue interim certification of tax-exempt status and collect a fee therefor in
112 accordance with subsection B of § 18.2-340.24.

113 9. The Commission shall report annually to the Governor and the General Assembly, which report
114 shall include a financial statement of the operation of the Commission and any recommendations for
115 legislation applicable to charitable gaming in the Commonwealth.

116 10. The Commission, its agents and employees may conduct such audits, in addition to those
117 required by § 18.2-340.31, as they deem necessary and desirable.

118 11. The Commission may limit the number of organizations for which a person may manage, operate
119 or conduct charitable games.

120 12. The Commission may report any alleged criminal violation of this article to the appropriate
121 attorney for the Commonwealth for appropriate action.

§ 18.2-340.19. Regulations of the Commission.

The Commission shall adopt regulations which:

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

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

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

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

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

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

The three-year residency requirement shall not apply (i) to any lodge or chapter of a national or international fraternal order or of a national or international civic organization which is exempt under § 501 (c) of the United States Internal Revenue Code and which has a lodge or chapter holding a charitable gaming permit issued under the provisions of this article anywhere within the Commonwealth; (ii) to booster clubs which have been operating for less than three years and which have been established solely to raise funds for school-sponsored activities in public schools which are less than three years old; (iii) to recently established volunteer fire and rescue companies or departments, after county, city or town approval; ~~or~~ (iv) to an organization which relocates its meeting place on a permanent basis from one jurisdiction to another, complies with the requirements of subdivision 2 of this section, and was the holder of a valid permit at the time of its relocation; *or (v) any organization which has obtained a resolution of support, duly adopted by the local governing body wherein the organization proposes to conduct charitable gaming, provided a true copy of such resolution is filed with the Commission.*

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

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

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

§ 18.2-340.27. Conduct of bingo games; special permits.

A. A qualified organization shall accept only cash or, at its option, checks in payment of any charges or assessments for players to participate in bingo games. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in bingo games.

B. 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 bingo games.

C. Bingo games may be held by qualified organizations no more frequently than two calendar days

183 in any calendar week, except in accordance with ~~subsection~~ *subsections D or E.*

184 D. A special permit may be granted a qualified organization which entitles it to conduct more
185 frequent operations of bingo games during carnivals, fairs and other similar events which are located in
186 the jurisdiction designated in the permit.

187 *E. Bingo games may be held by qualified organizations at a frequency authorized by a resolution of*
188 *support, duly adopted by the local governing body wherein the organization proposes to conduct*
189 *charitable gaming, provided a true copy of the such resolution is filed with the Commission before the*
190 *commencement of such additional gaming.*

191 § 18.2-340.28. Conduct of instant bingo.

192 A. Any organization qualified to conduct bingo games pursuant to the provisions of this article may
193 play instant bingo as a part of such bingo game and only at such location and at such times as
194 designated in the permit for regular bingo games.

195 B. ~~The gross receipts in the course of a reporting year from the playing of instant bingo shall not~~
196 ~~exceed fifty percent of the gross receipts of an organization's bingo operation.~~

197 C. Any organization conducting instant bingo shall maintain a record of the date, quantity and card
198 value of instant bingo supplies purchased as well as the name and address of the supplier of such instant
199 bingo supplies. The organization shall also maintain a written invoice or receipt from a nonmember of
200 the organization verifying any information required by this subsection. Instant bingo supplies shall be
201 paid for only by check drawn on an account of the organization. ~~During the conduct of instant bingo,~~
202 ~~the supplier's invoice, or a legible true copy thereof, for the instant bingo supplies being used shall be~~
203 ~~maintained by the organization on the premises where the instant bingo is being conducted.~~

204 DC. No qualified organization shall sell any instant bingo card to any individual under eighteen years
205 of age.

206 § 18.2-340.30. Reports of gross receipts and disbursements required; form of reports; failure to file.

207 A. Each qualified organization shall keep a complete record of all receipts from its charitable gaming
208 operation and all disbursements related to such operation. Each qualified organization shall file at least
209 annually, on a form prescribed by the Commission, a report of all such receipts and disbursements, the
210 amount of money on hand attributable to charitable gaming as of the end of the period covered by the
211 report and any other information related to its charitable gaming operation that the Commission may
212 require. In addition, the Commission, by regulation, may require any qualified organization whose
213 receipts exceed a specified amount during any three-month period to file a report of its receipts and
214 disbursements for such period. All reports filed per this section shall be a matter of public record.

215 B. All reports required by this section shall be acknowledged in the presence of a notary public and
216 filed on or before the date prescribed by the Commission.

217 C. The financial report shall be accompanied by a certificate, verified under oath, by the board of
218 directors or the executive committee, if any, of the organization stating that the proceeds of charitable
219 gaming have been used only for those purposes specified in § 18.2-340.19 and that the operation of the
220 charitable games has been in accordance with the provisions of this article.

221 D. Any qualified organization having annual gross receipts from charitable gaming in excess of
222 \$250,000, as shown on its annual financial report, shall attach to such report an opinion of a licensed
223 independent certified public accountant that in all material respects (i) the annual financial report fairly
224 presents beginning cash, receipts, operating costs, use of proceeds, and ending cash; (ii) the proceeds of
225 all charitable games have been used for those purposes specified in § 18.2-340.19; and (iii) the gross
226 receipts have been used in accordance with the provisions of this article. The opinion required by this
227 subsection shall be in addition to any other opinion that may be required by the Commission.

228 E. Each qualified organization shall designate an individual who shall be responsible for filing an
229 annual and, if required, quarterly financial report if the organization goes out of business or otherwise
230 ceases to conduct charitable gaming activities. The Commission shall require such reports as it deems
231 necessary until all proceeds of any charitable gaming have been used for the purposes specified in
232 § 18.2-340.19 or have been disbursed in a manner approved by the Commission.

233 F. Each qualified organization shall maintain *for three years* (i) ~~for three years~~ a written record of
234 the dates on which bingo games are played; ~~the number of people in attendance on each date~~ and the
235 amount of the gross receipts and prizes paid on each day; (ii) a record of the name and address of each
236 individual to whom a regular or special bingo game prize or jackpot from the playing of bingo *of \$100*
237 *or more* is awarded, as well as the amount of the award; and (iii) an itemized record of all receipts and
238 disbursements, including operating costs and use of proceeds incurred in operating bingo games.

239 G. The failure to file reports when due and, when required, the opinion of a licensed independent
240 certified public accountant in accordance with subsection D, shall cause the automatic revocation of the
241 permit, and no organization shall conduct any bingo game or raffle thereafter until the report or the
242 opinion is properly filed and a new permit is obtained.

243 § 18.2-340.32. Authority of local governments.

244 The governing body of any county, city or town may adopt an ordinance consistent with this article

and the regulations of the Commission which (i) prohibits the playing of instant bingo ~~and~~, (ii) establishes reasonable hours during which bingo games may be played within such jurisdiction, *and (iii) authorizes more frequent conduct of bingo games as provided in subsection E of § 18.2-340.27.* If the governing body of any town adopts an ordinance pursuant to the provisions of this section, such town shall not be subject to any ordinance adopted by the county within which such town lies.

§ 18.2-340.33. Prohibited practices.

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

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

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

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

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

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

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

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

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

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

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

c. Remuneration may be paid to off-duty law-enforcement officers from the jurisdiction in which 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.

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, markers, 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. If equipment or services are included by a landlord in any lease or contract, the lease or contract shall

306 itemize the amount attributable to the rent of the premises, equipment, and each service to be provided
307 by the landlord.

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

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

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

314 a. No bingo door prize shall exceed \$25;

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

316 c. No instant bingo prize for a single card shall exceed \$500; and

317 d. No bingo jackpot of any nature whatsoever shall exceed \$1,000, nor shall the total amount of
318 bingo jackpot prizes awarded in any one calendar day exceed \$1,000.

319 The provisions of this subdivision shall not apply to any bingo game in which all the gross receipts
320 from players for that game are paid as prize money back to the players provided there is no more than
321 one such game per calendar day of play and the prize money from any such game does not exceed
322 \$1,000, such games being commonly referred to as "winner-take-all" games.

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

324 The provisions of this subdivision shall not apply to (i) a raffle conducted no more than once per
325 calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501 (c) (3)
326 of the Internal Revenue Code for a prize consisting of a lot improved by a residential dwelling where
327 100 percent of the moneys received from such a raffle, less deductions for the fair market value for the
328 cost of acquisition of the land and materials, are donated to lawful religious, charitable, community, or
329 educational organizations specifically chartered or organized under the laws of the Commonwealth and
330 qualified as a § 501 (c) (3) tax-exempt organization or (ii) pull-tab devices when played as permitted in
331 § 18.2-340.26, which prize award for a single card shall not exceed \$500.

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

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

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

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