

970795396

HOUSE BILL NO. 2304

Offered January 17, 1997

A BILL to amend and reenact §§ 18.2-340.16, 18.2-340.19, 18.2-340.23, 18.2-340.24, 18.2-340.25, 18.2-340.28, 18.2-340.30, 18.2-340.31, and 18.2-340.33 of the Code of Virginia, relating to charitable gaming; net receipts.

Patrons—Parrish, Baker, Bloxom, Brickley, Callahan, Councill, Crouch, Davies, Drake, Guest, Howell, Ingram, Jackson, Katzen, Landes, Marshall, May, Morgan, Nelms, Nixon, Orrock, Phillips, Purkey, Rhodes, Rollison, Ruff, Sherwood, Shuler, Stump, Tate, Thomas, Way and Weatherholtz; Senators: Benedetti, Chichester, Hanger, Hawkins, Newman, Potts, Stolle and Waddell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-340.16, 18.2-340.19, 18.2-340.23, 18.2-340.24, 18.2-340.25, 18.2-340.28, 18.2-340.30, 18.2-340.31, and 18.2-340.33 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.

"Net receipts" means gross receipts less all prizes paid out to players of charitable games.

"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

INTRODUCED

HB2304

60 race involving inanimate objects floating on a body of water, commonly referred to as a "duck race."

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

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

68 § 18.2-340.19. Regulations of the Commission.

69 The Commission shall adopt regulations which:

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

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

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

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

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

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

91 § 18.2-340.23. Organizations exempt from certain permit, financial reporting and audit requirements.

92 Any organization that reasonably expects to realize ~~gross~~ *net* receipts of \$25,000 or less in any
93 twelve-month period and a volunteer fire department or rescue squad or auxiliary unit thereof which has
94 been recognized by an ordinance or resolution of the political subdivision where the voluntary fire
95 department or rescue squad is located as being a part of the safety program of such political subdivision
96 shall be exempt from the requirements of § 18.2-340.25 if, prior to conducting charitable gaming, it
97 notifies the Commission, on a form prescribed by the Commission, that it will conduct charitable
98 gaming. Any such organizations also shall be exempt from the financial reporting and audit requirements
99 of this article and the payment of audit fees but shall file with the Commission, at such time or times as
100 may be required by the Commission, a resolution of its board of directors stating that the organization
101 has complied with the provisions of this article. If any of the organization's actual ~~gross~~ *net* receipts for
102 the twelve-month period exceed \$25,000, the Commission may require the organization to file by a
103 specified date the report required by § 18.2-340.30. Nothing in this section shall prevent the Commission
104 from conducting any investigation or audit it deems appropriate to ensure the organization's compliance
105 with the provisions of this article or the Commission's regulations.

106 § 18.2-340.24. Eligibility for permit; exceptions; where valid.

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

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

111 The three-year residency requirement shall not apply (i) to any lodge or chapter of a national or
112 international fraternal order or of a national or international civic organization which is exempt under
113 § 501 (c) of the United States Internal Revenue Code and which has a lodge or chapter holding a
114 charitable gaming permit issued under the provisions of this article anywhere within the Commonwealth;
115 (ii) to booster clubs which have been operating for less than three years and which have been
116 established solely to raise funds for school-sponsored activities in public schools which are less than
117 three years old; (iii) to recently established volunteer fire and rescue companies or departments, after
118 county, city or town approval; or (iv) to an organization which relocates its meeting place on a
119 permanent basis from one jurisdiction to another, complies with the requirements of subdivision 2 of this
120 section, and was the holder of a valid permit at the time of its relocation.

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

B. Any organization whose ~~gross net~~ 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.

§ 18.2-340.28. Conduct of instant bingo.

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

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

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

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

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

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

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

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

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

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

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

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

183 opinion is properly filed and a new permit is obtained.

184 § 18.2-340.31. Audit of reports; exemption; fee.

185 A. Except as provided in § 18.2-340.23, all reports filed pursuant to § 18.2-340.30 shall be subject to
186 audit by the Commission in accordance with Commission regulations.

187 B. The Commission shall prescribe a reasonable audit fee not to exceed the actual cost of the audit if
188 the audit is conducted by an independent auditor or accountant, or if the audit is conducted by the
189 Commission, two percent of (i) the ~~gross net~~ receipts which an organization reports pursuant to
190 § 18.2-340.30 and (ii) the interest income on money the organization has received from charitable
191 gaming operations. The audit fee shall accompany each annual report.

192 C. The audit fee shall be payable to the Commission. All audit fees received by the Commission
193 shall be separately accounted for and shall be used only for the purposes of auditing and regulating
194 charitable gaming.

195 § 18.2-340.33. Prohibited practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

264 The provisions of this subdivision shall not apply to any bingo game in which all the gross receipts
265 from players for that game are paid as prize money back to the players provided there is no more than
266 one such game per calendar day of play and the prize money from any such game does not exceed
267 \$1,000, such games being commonly referred to as "winner-take-all" games.

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

269 The provisions of this subdivision shall not apply to (i) a raffle conducted no more than once per
270 calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501 (c) (3)
271 of the Internal Revenue Code for a prize consisting of a lot improved by a residential dwelling where
272 100 percent of the moneys received from such a raffle, less deductions for the fair market value for the
273 cost of acquisition of the land and materials, are donated to lawful religious, charitable, community, or
274 educational organizations specifically chartered or organized under the laws of the Commonwealth and
275 qualified as a § 501 (c) (3) tax-exempt organization or (ii) pull-tab devices when played as permitted in
276 § 18.2-340.26, which prize award for a single card shall not exceed \$500.

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

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

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

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