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HOUSE BILL NO. 1913

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 27, 1999)

(Patron Prior to Substitute—Delegate Hamilton)

A BILL to amend and reenact §§ 18.2-340.16, 18.2-340.33, and 18.2-340.34 of the Code of Virginia, relating to charitable gaming; sale of items incidental to the conduct of charitable gaming.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-340.16, 18.2-340.33, and 18.2-340.34 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-340.16. (Effective October 1, 1998) 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, (ii) Commission-approved electronic devices which display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Commission-approved cards pursuant to subdivision 13 of § 18.2-340.18, 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.

"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 seal cards, 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.*

"Commission" means the Charitable Gaming Commission.

"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 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 volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the 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;

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

5. A local chamber of commerce; or

6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Qualified organization" means any organization to which a valid permit has been issued by the

60 Commission to conduct charitable gaming or any organization which is exempt pursuant to
61 § 18.2-340.23.

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

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

72 "Reasonable and proper business expenses" means business expenses actually incurred by a qualified
73 organization and not otherwise allowed under this article or under Commission regulations on real estate
74 and personal property tax payments, travel expenses, payments of utilities and trash collection services,
75 legal and accounting fees, costs of business furniture, fixtures and office equipment and costs of
76 acquisition, maintenance, repair or construction of an organization's real property. For the purpose of this
77 definition, salaries and wages of employees whose primary responsibility is to provide services for the
78 principal benefit of an organization's members shall not qualify as a business expense.

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

81 § 18.2-340.33. Prohibited practices.

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

84 1. No part of the gross receipts derived by a qualified organization may be used for any purpose
85 other than (i) reasonable and proper gaming expenses, (ii) reasonable and proper business expenses, (iii)
86 those lawful religious, charitable, community or educational purposes for which the organization is
87 specifically chartered or organized, and (iv) expenses relating to the acquisition, construction,
88 maintenance, or repair of any interest in the real property involved in the operation of the organization
89 and used for lawful religious, charitable, community or educational purposes. For the purposes of clause
90 (iv), such expenses may include the expenses of a corporation formed for the purpose of serving as the
91 real estate holding entity of a qualified organization, provided (a) such holding entity is qualified as a
92 tax exempt organization under § 501 (c) (3), (7) or (10) of the Internal Revenue Code and (b) the
93 membership of the qualified organization is identical to such holding entity.

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

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

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

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

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

113 5. No person shall participate in the management, operation or conduct of any charitable game unless
114 such person is and, for a period of at least thirty days immediately preceding such participation, has
115 been a bona fide member of the organization.

116 The provisions of this subdivision shall not apply to (i) persons employed as clerical assistants by
117 qualified organizations composed of or for deaf or blind persons; (ii) employees of a corporate sponsor
118 of a qualified organization, provided such employees' participation is limited to the management,
119 operation or conduct of no more than one raffle per year; or (iii) the spouse or family member of any
120 such bona fide member of a qualified organization provided at least one bona fide member is present.

121 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;

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; and

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 Commission regulations.

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

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 \$25;

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

c. No instant bingo prize for a single card shall exceed \$500; 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 calendar day exceed \$1,000.

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

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

The provisions of this subdivision shall not apply to (i) a raffle conducted no more than once per calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501 (c) (3) 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) (3) tax-exempt organization or (ii) pull tabs or seal cards when played as permitted in § 18.2-340.26, which prize award for a single card shall not exceed \$500.

11. No qualified organization composed of or for deaf or blind persons which employs a person not a member to provide clerical assistance in 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.

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

13. Qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 shall not circumvent any restrictions and prohibitions which would otherwise apply if a single organization were

conducting such games. These restrictions and prohibitions shall include, but not be limited to, the frequency with which bingo games may be held, the value of merchandise or money awarded as prizes, or any other practice prohibited under this section.

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

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

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

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

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

C. The Commission may suspend, revoke or refuse to renew the registration certificate of any supplier for any conduct described in subsection B or for any violation of this article or regulation of the Commission. Before taking any such action, the Commission shall give the supplier a written statement of the grounds upon which it proposes to take such action and an opportunity to be heard. Every hearing in a contested case shall be conducted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

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

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