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SENATE BILL NO. 394

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 24, 2022)

(Patron Prior to Substitute—Senator Bell)

A BILL to amend and reenact §§ 18.2-340.16, 18.2-340.18, 18.2-340.28:2, and 18.2-340.33 of the Code of Virginia, relating to charitable gaming; registration of landlords; Texas Hold'em poker operations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-340.16, 18.2-340.18, 18.2-340.28:2, 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 (i) individual cards having randomly numbered squares ranging from one to 75, (ii) Department-approved electronic devices that display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Department-approved cards, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random.

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

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

"Charitable gaming" or "charitable games" means those raffles, Texas Hold'em poker tournaments, 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, playing cards for Texas Hold'em poker, poker chips, and any other equipment or product manufactured for or intended to be used in the conduct of charitable games. However, for the purposes of this article, charitable gaming supplies shall not include items incidental to the conduct of charitable gaming such as markers, wands, or tape.

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

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

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

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

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

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

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

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

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

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

"Network bingo" means a specific bingo game in which pari-mutuel play is permitted.

60 "Network bingo provider" means a person licensed by the Department to operate network bingo.

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

65 "Organization" means any one of the following:

66 1. A volunteer fire department or volunteer emergency medical services agency or auxiliary unit
67 thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the
68 political subdivision where the volunteer fire department or volunteer emergency medical services
69 agency is located as being a part of the safety program of such political subdivision;

70 2. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
71 Code, is operated, and has always been operated, exclusively for educational purposes, and awards
72 scholarships to accredited public institutions of higher education or other postsecondary schools licensed
73 or certified by the Board of Education or the State Council of Higher Education for Virginia;

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

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

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

79 6. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
80 Code and is operated, and has always been operated, exclusively to provide services and other resources
81 to older Virginians, as defined in § 51.5-116;

82 7. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
83 Code and is operated, and has always been operated, exclusively to foster youth amateur sports;

84 8. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
85 Code and is operated, and has always been operated, exclusively to provide health care services or
86 conduct medical research;

87 9. An accredited public institution of higher education or other postsecondary school licensed or
88 certified by the Board of Education or the State Council of Higher Education for Virginia that is exempt
89 from income tax pursuant to § 501(c)(3) of the Internal Revenue Code;

90 10. A church or religious organization that is exempt from income tax pursuant to § 501(c)(3) of the
91 Internal Revenue Code;

92 11. An organization that is exempt from income tax pursuant to § 501(c)(3) or 501(c)(4) of the
93 Internal Revenue Code and is operated, and has always been operated, exclusively to (i) create and
94 foster a spirit of understanding among the people of the world; (ii) promote the principles of good
95 government and citizenship; (iii) take an active interest in the civic, cultural, social, and moral welfare
96 of the community; (iv) provide a forum for the open discussion of matters of public interest; (v)
97 encourage individuals to serve the community without personal financial reward; and (vi) encourage
98 efficiency and promote high ethical standards in commerce, industries, professions, public works, and
99 private endeavors;

100 12. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
101 Code and is operated, and has always been operated, exclusively to (i) raise awareness of
102 law-enforcement officers who died in the line of duty; (ii) raise funds for the National Law Enforcement
103 Officers Memorial and Museum; and (iii) raise funds for the charitable causes of other organizations that
104 are exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue Code;

105 13. An organization that is exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue
106 Code and is operated, and has always been operated, exclusively to (i) promote the conservation of the
107 environment, caves, or other natural resources; (ii) promote or develop opportunities for the use of
108 science and technology to advance the conservation of the environment, caves, or other natural
109 resources; and (iii) raise funds for the conservation of the environment, caves, or other natural resources
110 or provide grant opportunities to other nonprofit organizations that are devoted to such conservation
111 efforts;

112 14. A local chamber of commerce; or

113 15. Any other nonprofit organization that is exempt from income tax pursuant to § 501(c) of the
114 Internal Revenue Code and that raises funds by conducting raffles, bingo, instant bingo, pull tabs, or
115 seal cards that generate annual gross receipts of \$40,000 or less, provided that such gross receipts, less
116 expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.
117 Notwithstanding § 18.2-340.26:1, proceeds from instant bingo, pull tabs, and seal cards shall be included
118 when calculating an organization's annual gross receipts for the purposes of this subdivision.

119 "Pari-mutuel play" means an integrated network operated by a licensee of the Department comprised
120 of participating charitable organizations for the conduct of network bingo games in which the purchase
121 of a network bingo card by a player automatically includes the player in a pool with all other players in

the network, and where the prize to the winning player is awarded based on a percentage of the total amount of network bingo cards sold in a particular network.

"Qualified organization" means any organization to which a valid permit has been issued by the Department to conduct charitable gaming or any organization that 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."

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

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

"Texas Hold'em poker game" means a variation of poker in which (i) players receive two cards facedown that may be used individually, (ii) five cards shown face up are shared among all players in the game, (iii) players combine any number of their individual cards with the shared cards to make the highest five-card hand to win the value wagered during the game, and (iv) the ranking of hands and the rules of the game are governed by the official rules of the Poker Tournament Directors Association.

"Texas Hold'em poker tournament" or "tournament" means an organized competition of players (i) who pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition; (ii) who may be allowed to pay an additional fee, during set preannounced times of the competition, to receive additional poker chips for use in the competition; (iii) who may be seated at one or more tables simultaneously playing Texas Hold'em poker games; (iv) who upon running out of poker chips are eliminated from the competition; and (v) a pre-set number of whom are awarded prizes of value according to how long such players remain in the competition.

§ 18.2-340.18. Powers and duties of the Department.

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

1. The Department is vested with jurisdiction and supervision over all charitable gaming authorized under the provisions of this article and including all persons that conduct or provide goods, services, or premises used in the conduct of charitable gaming. It may employ such persons as are necessary to ensure that charitable gaming is conducted in conformity with the provisions of this article and the regulations of the Board. The Department shall designate such agents and employees as it deems necessary and appropriate who shall be sworn to enforce the provisions of this article and the criminal laws of the Commonwealth and who shall be law-enforcement officers as defined in § 9.1-101.

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

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

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

5. The Department may compel any person conducting charitable gaming to file with the Department such documents, information, or data as shall appear to the Department to be necessary for the performance of its duties.

6. The Department may enter into arrangements with any governmental agency of this or any other state or any locality in the Commonwealth or any agency of the federal government for the purposes of exchanging information or performing any other act to better ensure the proper conduct of charitable gaming.

7. The Department may issue a charitable gaming permit while the permittee's tax-exempt status is pending approval by the Internal Revenue Service.

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

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

10. The Department may limit the number of organizations for which a person may manage, operate, or conduct charitable games.

11. *The Department may promulgate regulations that require any landlord that leases to a qualified organization any premises devoted in whole or in part to the conduct of bingo games or any other charitable gaming to register with the Department.*

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

~~12.~~ 13. Beginning July 1, 2024, and at least once every five years thereafter, the Department shall convene a stakeholder work group to review the limitations on prize amounts and provide any recommendations to the General Assembly by November 30 of the year in which the stakeholder work group is convened.

§ 18.2-340.28:2. Conduct of Texas Hold'em poker tournaments by qualified organizations; conditions.

A. Any organization qualified to conduct bingo games on or after July 1, 2019, may conduct Texas Hold'em poker tournaments; *however, no such organization may conduct individual Texas Hold'em poker games.* The Board shall promulgate regulations establishing circumstances under which organizations qualified to conduct bingo games prior to July 1, 2019, may conduct Texas Hold'em poker tournaments.

B. A qualified organization may contract with an operator to administer Texas Hold'em poker tournaments. Limitations on operator fees shall be established by Board regulations.

C. A qualified organization shall accept only cash or, at its option, checks in payment of any charges or assessments for players to participate in Texas Hold'em poker tournaments. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in Texas Hold'em poker tournaments.

D. 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 Texas Hold'em poker tournaments.

E. No qualified organization shall allow any individual younger than 18 years of age to participate in Texas Hold'em poker tournaments.

§ 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 gaming expenses, (ii) reasonable and proper business expenses, (iii) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized, and (iv) 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. For the purposes of clause (iv), such expenses may include the expenses of a corporation formed for the purpose of serving as the real estate holding entity of a qualified organization, provided (a) such holding entity is qualified as a tax exempt organization under § 501(c) of the Internal Revenue Code and (b) the membership of the qualified organization is identical to such holding entity.

2. Except as provided in § 18.2-340.34:1, 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 management and operation but not 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 person shall participate in the management or operation of any charitable game unless such person is and, for a period of at least 30 days immediately preceding such participation, has been a bona fide member of the organization. For any organization that is not composed of members, a person who is not a bona fide member may volunteer in the conduct of a charitable game as long as that person is directly supervised by a bona fide official member of the organization.

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; (iii) the spouse or family member of any such bona fide member of a qualified organization provided at least one bona fide member is present; or (iv) persons employed by a qualified organization authorized to sell pull tabs or seal cards in accordance with § 18.2-340.16, provided (a) such sales are conducted by no more than two on-duty employees, (b) such employees receive no compensation for or based on the sale of the pull tabs or seal cards, and (c) such sales are conducted in the private social quarters of the organization.

5. 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 \$30 per event for providing clerical assistance in the management and operation but not the conduct of charitable games only for such organizations;

b. Persons under the age of 19 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, or to private security services businesses licensed pursuant to § 9.1-139 providing uniformed security for such bingo games, provided that employees of such businesses shall not otherwise be involved in the management, operation, or conduct of the bingo games of that organization;

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

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

f. Volunteers of a qualified organization may be reimbursed for their reasonable and necessary travel expenses, not to exceed \$50 per session.

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

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

7. 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.

8. 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 \$250 for a single door prize or \$500 in cumulative door prizes in any one session;

b. No regular bingo or special bingo game prize shall exceed \$100. However, up to 10 games per bingo session may feature a regular bingo or special bingo game prize of up to \$200;

c. No instant bingo, pull tab, or seal card prize for a single card shall exceed \$2,000;

d. Except as provided in this subdivision 8, no bingo jackpot of any nature whatsoever shall exceed \$1,000, nor shall the total amount of bingo jackpot prizes awarded in any one session exceed \$1,000.

306 Proceeds from the sale of bingo cards and the sheets used for bingo jackpot games shall be accounted
307 for separately from the bingo cards or sheets used for any other bingo games; and

308 e. No single network bingo prize shall exceed \$25,000. Proceeds from the sale of network bingo
309 cards shall be accounted for separately from bingo cards and sheets used for any other bingo game.

310 9. The provisions of subdivision 8 shall not apply to:

311 Any progressive bingo game, in which (i) a regular or special prize, not to exceed \$100, is awarded
312 on the basis of predetermined numbers or patterns selected at random and (ii) a progressive prize, not to
313 exceed \$500 for the initial progressive prize and \$5,000 for the maximum progressive prize, is awarded
314 if the predetermined numbers or patterns are covered when a certain number of numbers is called,
315 provided that (a) there are no more than six such games per session per organization, (b) the amount of
316 increase of the progressive prize per session is no more than \$200, (c) the bingo cards or sheets used in
317 such games are sold separately from the bingo cards or sheets used for any other bingo games, (d) the
318 organization separately accounts for the proceeds from such sale, and (e) such games are otherwise
319 operated in accordance with the Department's rules of play.

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

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

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

333 12. No person shall participate in the management or operation of any charitable game if he has ever
334 been convicted of any felony or if he has been convicted of any misdemeanor involving fraud, theft, or
335 financial crimes within the preceding five years. No person shall participate in the conduct of any
336 charitable game if, within the preceding 10 years, he has been convicted of any felony or if, within the
337 preceding five years he has been convicted of any misdemeanor involving fraud, theft, or financial
338 crimes. In addition, no person shall participate in the management, operation or conduct of any
339 charitable game if that person, within the preceding five years, has participated in the management,
340 operation, or conduct of any charitable game which was found by the Department or a court of
341 competent jurisdiction to have been operated in violation of state law, local ordinance or Board
342 regulation.

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

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

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

353 16. *No organization qualified to conduct Texas Hold'em poker tournaments pursuant to*
354 *§ 18.2-340.28:2 shall conduct any Texas Hold'em poker games where the game has no predetermined*
355 *end time and the players wager actual money or poker chips that have cash value.*