

22102990D

SENATE BILL NO. 566

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact §§ 8.01-534, 18.2-340.15, 18.2-340.20, 18.2-340.30, 18.2-340.33, 18.2-340.34, and 18.2-340.35 of the Code of Virginia, relating to charitable gaming; enforcement and penalties.*

Patron—McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That reenact §§ 8.01-534, 18.2-340.15, 18.2-340.20, 18.2-340.30, 18.2-340.33, 18.2-340.34, and 18.2-340.35 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-534. Grounds of action for pretrial levy or seizure of attachment.

A. It shall be sufficient ground for an action for pretrial levy or seizure or an attachment that the principal defendant or one of the principal defendants:

1. Is a foreign corporation, or is not a resident of this Commonwealth, and has estate or has debts owing to such defendant within the county or city in which the attachment is, or that such defendant being a nonresident of this Commonwealth, is entitled to the benefit of any lien, legal or equitable, on property, real or personal, within the county or city in which the attachment is. The word "estate," as herein used, includes all rights or interests of a pecuniary nature which can be protected, enforced, or proceeded against in courts of law or equity;

2. Is removing or is about to remove himself out of this Commonwealth with intent to change his domicile;

3. Intends to remove, or is removing, or has removed the specific property sued for, or his own estate, or the proceeds of the sale of his property, or a material part of such estate or proceeds, out of this Commonwealth so that there will probably not be therein effects of such debtor sufficient to satisfy the claim when judgment is obtained therefor should only the ordinary process of law be used to obtain the judgment;

4. Is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities or evidences of debt with intent to hinder, delay, or defraud his creditors;

5. Has assigned or disposed of or is about to assign or dispose of his estate, or some part thereof, with intent to hinder, delay or defraud his creditors;

6. Has absconded or is about to abscond or has concealed or is about to conceal himself or his property to the injury of his creditors, or is a fugitive from justice;

7. *Has violated any provision of law related to charitable gaming pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2.*

The intent mentioned in subdivisions 4 and 5 ~~above~~ may be stated either in the alternative or conjunctive.

B. It shall be sufficient ground for an action for pretrial levy or seizure or an attachment if the specific personal property sought to be levied or seized:

1. Will be sold, removed, secreted or otherwise disposed of by the defendant, in violation of an obligation to the plaintiff, so as not to be forthcoming to answer the final judgment of the court respecting the same; or

2. Will be destroyed, or materially damaged or injured if permitted to remain in the possession of the principal defendant or one of the principal defendants or other person or persons claiming under them.

C. In an action for rent, it also shall be a sufficient ground if there is an immediate danger that the property subject to the landlord's lien for rent will be destroyed or concealed.

§ 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 but shall be conducted only in strict compliance with the provisions of this article. The Department of Agriculture and Consumer Services is vested with control of all charitable gaming in the Commonwealth. The Charitable Gaming Board shall have the power to prescribe regulations and conditions 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 that may be granted ~~or~~, denied, *or revoked* by the Department of Agriculture and Consumer Services or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.

INTRODUCED

SB566

§ 18.2-340.20. Denial, suspension, or revocation of permit; hearings and appeals.

A. The Department may deny, suspend, or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Board ~~only after the proposed action by the Department has been reviewed and approved by the Board~~. The action of the Department in denying, suspending, or revoking any permit shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.).

B. Except as provided in §§ 8.01-534, 18.2-340.25, 18.2-340.30, and 18.2-340.36, no permit to conduct charitable gaming shall be denied, suspended, or revoked, *and no charitable games or funds from charitable gaming operations shall be seized*, except upon notice stating the proposed basis for such action and the time and place for the hearing. At the discretion of the Department, hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court. After a hearing on the issues, the Department may refuse to issue or may suspend or revoke any such permit if it determines that the organization has not complied with the provisions of this article or the regulations of the Board.

C. Any person aggrieved by a refusal of the Department to issue any permit, the suspension or revocation of a permit, or any other action of the Department may seek review of such action in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

A. Each qualified organization shall keep a complete record of all inventory of charitable gaming supplies purchased, all receipts from its charitable gaming operation, and all disbursements related to such operation. Except as provided in § 18.2-340.23, each qualified organization shall file *under penalty of perjury and at least annually*, on a form prescribed by the Department, 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 Department may require. In addition, the Board, by regulation, may require any qualified organization whose net 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 pursuant to this section shall be a matter of public record.

B. All reports required by this section shall be filed on or before the date prescribed by the Department. The Board, by regulation, shall establish a schedule of late fees to be assessed for any organization that fails to submit required reports by the due date.

C. Except as provided in § 18.2-340.23, each qualified organization shall designate or compensate an outside individual or group 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 Department 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 Department.

D. Each qualified organization shall maintain for three years a complete written record of (i) all charitable gaming sessions using Department prescribed forms or reasonable facsimiles thereof approved by the Department; (ii) the name and address of each individual to whom is awarded any charitable gaming prize or jackpot that meets or exceeds the requirements of Internal Revenue Service Publication 3079, 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.

E. The failure to file reports within 30 days of the time such reports are due shall cause the automatic revocation of the permit, and no organization shall conduct any bingo game or raffle thereafter until the report is properly filed and a new permit is obtained. However, the Department may grant an extension of time for filing such reports for a period not to exceed 45 days if requested by an organization, provided the organization requests an extension within 15 days of the time such reports are due and all projected fees are paid. For the term of any such extension, the organization's permit shall not be automatically revoked, such organization may continue to conduct charitable gaming, and no new permit shall be required.

§ 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, *and* (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 *wholly* 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; *and* (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

182 games on its own behalf at premises owned by it.

183 7. No qualified organization shall enter into any contract with or otherwise employ or compensate
184 any member of the organization on account of the sale of bingo supplies or equipment.

185 8. No organization shall award any bingo prize money or any merchandise valued in excess of the
186 following amounts:

187 a. No bingo door prize shall exceed \$250 for a single door prize or \$500 in cumulative door prizes
188 in any one session;

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

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

192 d. Except as provided in this subdivision 8, no bingo jackpot of any nature whatsoever shall exceed
193 \$1,000, nor shall the total amount of bingo jackpot prizes awarded in any one session exceed \$1,000.
194 Proceeds from the sale of bingo cards and the sheets used for bingo jackpot games shall be accounted
195 for separately from the bingo cards or sheets used for any other bingo games; and

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

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

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

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

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

217 11. No qualified organization composed of or for deaf or blind persons which employs a person not
218 a member to provide clerical assistance in the management and operation but not the conduct of any
219 charitable games shall conduct such games unless it has in force fidelity insurance, as defined in §
220 38.2-120, written by an insurer licensed to do business in the Commonwealth.

221 12. No person shall participate in the management or operation of any charitable game if he has ever
222 been convicted of any felony or if he has been convicted of any misdemeanor involving fraud, theft, or
223 financial crimes within the preceding five years. No person shall participate in the conduct of any
224 charitable game if, within the preceding 10 years, he has been convicted of any felony or if, within the
225 preceding five years he has been convicted of any misdemeanor involving fraud, theft, or financial
226 crimes. In addition, no person shall participate in the management, operation or conduct of any
227 charitable game if that person, within the preceding five years, has participated in the management,
228 operation, or conduct of any charitable game which was found by the Department or a court of
229 competent jurisdiction to have been operated in violation of state law, local ordinance or Board
230 regulation.

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

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

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

241 **§ 18.2-340.34. Suppliers of charitable gaming supplies; manufacturers of electronic games of**
242 **chance systems; permit; qualification; suspension, revocation, or refusal to renew certificate;**
243 **maintenance, production, and release of records.**

A. No person shall offer to sell, sell, or otherwise provide charitable gaming supplies to any qualified organization and no manufacturer shall distribute electronic games of chance systems for charitable gaming in the Commonwealth unless and until such person has made application for and has been issued a permit by the Department. An application for permit shall be made on forms prescribed by the Department and shall be accompanied by a fee in the amount of \$1,000. Each permit shall remain valid for a period of one year from the date of issuance. Application for renewal of a permit shall be accompanied by a fee in the amount of \$1,000 and shall be made on forms prescribed by the Department.

B. The Board shall have authority to prescribe by regulation reasonable criteria consistent with the provisions of this article for the registration of suppliers and manufacturers of electronic games of chance systems for charitable gaming. The Department shall refuse to issue a permit to any supplier or manufacturer 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 that, if committed in the Commonwealth, would be a felony; (ii) been convicted of or pleaded nolo contendere to a crime involving gambling; (iii) violated the gaming laws of any jurisdiction within the last five years, including violations for failure to register; or (iv) had any license, permit, certificate, or other authority related to charitable gaming suspended or revoked in the Commonwealth or in any other jurisdiction within the last five years. The Department may refuse to issue a permit to any supplier or manufacturer who has, or which has any officer, director, partner, or owner who has, (a) 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 or (b) failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763.

C. The Department shall suspend, revoke, or refuse to renew the permit of any supplier or manufacturer for any conduct described in clause (i), (ii), (iii), or (iv) of subsection B. The Department ~~may~~ shall suspend, revoke, or refuse to renew the permit of any supplier or manufacturer for any conduct described in clause (a) or (b) of subsection B or for any violation of this article or regulation of the Board. Before taking any such action, the Department shall give the supplier or manufacturer 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 (§ 2.2-4000 et seq.).

D. Each supplier shall document each sale of charitable gaming supplies, including electronic games of chance systems, 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 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 charitable gaming supplies, including electronic games of chance systems, or other items incidental to the conduct of charitable gaming as the Board may prescribe by regulation. A legible copy of the invoice shall accompany the charitable gaming supplies when delivered to the qualified organization.

Each manufacturer of electronic games of chance systems shall document each distribution of such systems to a qualified organization or supplier on an invoice which clearly shows (a) the name and address of the qualified organization or supplier to which such systems were distributed; (b) the date of distribution; (c) the serial number of each such system; and (d) any other information with respect to electronic games of chance systems as the Board may prescribe by regulation. A legible copy of the invoice shall accompany the electronic games of chance systems when delivered to the qualified organization or supplier.

E. Each supplier and manufacturer 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 and manufacturer shall make such documents immediately available for inspection and copying to any agent or employee of the Department upon request made during normal business hours. This subsection shall not limit the right of the Department to require the production of any other documents in the possession of the supplier or manufacturer which relate to its transactions with qualified organizations. All documents and other information of a proprietary nature furnished to the Department in accordance with this subsection shall not be a matter of public record and shall be exempt from disclosure under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. Each supplier and manufacturer shall provide to the Department the results of background checks and any other records or documents necessary for the Department to enforce the provisions of subsections B and C.

§ 18.2-340.35. Assistance from Department of State Police.

305 The Department of the State Police, upon request of the Department, shall assist in the conduct of
306 investigations by the Department.
307 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
308 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
309 **necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and**
310 **cannot be determined for periods of commitment to the custody of the Department of Juvenile**
311 **Justice.**