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## Charitable Gaming Law

Legislative Changes from the 2022 Regular Session

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### Introduction

During the 2021 Special Session I, the General Assembly enacted SB 1127 (Reeves)<sup>1</sup> containing an enactment clause prohibiting the Charitable Gaming Board (the Board) from adjusting the percentage of gross receipts that an organization must use for religious, charitable, community, or educational purposes or for certain real property expenses until the completion of a study by a legislative joint subcommittee. The legislative joint subcommittee was tasked with analyzing and making recommendations regarding (i) the percentage of an organization's gross receipts that should be used for the religious, charitable, community, or educational purposes for which the organization was chartered or organized and certain real property expenses; (ii) whether proceeds from instant bingo, pull tabs, and seal cards should be included when calculating an organization's gross receipts; (iii) the locations at which organizations should be permitted to conduct charitable gaming; (iv) the types of organizations that should be permitted to conduct charitable gaming; (v) the regulatory oversight of charitable gaming in the Commonwealth, including the membership, structure, and necessity of the Board; and (vi) necessary safeguards and conflict of interest prohibitions on the Board.<sup>2</sup>

The legislative joint subcommittee reported its findings to the General Assembly, and during the 2022 Regular Session, the General Assembly enacted legislation resulting in a major overhaul of charitable gaming law.<sup>3</sup> This issue brief (a) outlines the changes made with regard to the structure, makeup, and authority of the Board and the overall administration of charitable gaming laws and regulations; (b) defines key terminology and identifies the new parameters put in place for the conduct of electronic gaming by qualified charitable organizations; (c) clarifies the changes made to current law with respect to the conduct of Texas Hold'em poker game and tournament operations by qualified charitable organizations; and (d) provides a summary of new penalties and enforcement measures created to combat violations of charitable gaming law.

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<sup>1</sup> Enacted as Chapter 520 of the Acts of Assembly of 2021, Special Session I.

<sup>2</sup> *Id.* at fourth enactment clause.

<sup>3</sup> HB 763 (Krizek) and SB 403 (Reeves), enacted as Chapters 767 and 722 of the Acts of Assembly of 2022, respectively; HB 765 (Krizek) and SB 402 (Reeves), enacted as Chapters 609 and 554 of the Acts of Assembly of 2022, respectively; HB 766 (Krizek) and SB 401 (Bell), enacted as Chapters 768 and 721 of the Acts of Assembly of 2022, respectively; HB 767 (Krizek) and SB 399 (Bell), enacted as Chapters 608 and 555 of the Acts of Assembly of 2022, respectively; SB 394 (Bell), enacted as Chapter 612 of the Acts of Assembly of 2022; SB 530 (Reeves) (incorporating SB 566 [McDougle]), enacted as Chapter 553 of the Acts of Assembly of 2022.

## Summary of Changes

The following is a summary of the major changes made to charitable gaming law as a result of legislation enacted during the 2022 Regular Session.<sup>4</sup>

### *A. Change in Power*

One of the more notable policy recommendations from the legislative joint subcommittee was to limit the power of the Board, and as such, legislation was enacted that changes the Board from a policy board to an advisory board in the executive branch of state government.<sup>5</sup> Such legislation also decreases the membership of the Board from 11 members to nine members and shifts the Board's power and duty to promulgate regulations related to charitable gaming in the Commonwealth to the Commissioner of Agriculture and Consumer Services.<sup>6</sup>

### *B. Electronic Gaming*

#### **Definitions**<sup>7</sup>

For the purposes of this subsection, these terms have the following meanings:

**Electronic gaming** means any instant bingo, pull tabs, or seal card gaming that is conducted primarily by use of an electronic device.

**Electronic gaming adjusted gross receipts** means the gross receipts derived from electronic gaming less the total amount in prize money paid out to players.

**Social organization** means any qualified organization that provides certification to the Department of Agriculture and Consumer Services (the Department) that it is:

1. An accredited public institution of higher education or other postsecondary school licensed or certified by the Board of Education or the State Council of Higher Education for Virginia qualified under § 501(c)(3) of the Internal Revenue Code;
2. A fraternal beneficiary society, order, or association qualified under § 501(c)(8) of the Internal Revenue Code;
3. A domestic fraternal society, order, or association qualified under § 501(c)(10) of the Internal Revenue Code; or
4. A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization qualified under § 501(c)(19) of the Internal Revenue Code.

**Social quarters** means, in addition to any specifications prescribed by the Department, an area at a social organization's primary location that (i) such organization designates to be used predominantly by its members for social and recreational activities, (ii) is accessible exclusively to members of the social organization and their guests, and (iii) is not advertised or open to the general public. It shall not disqualify the area from being considered social quarters if guests

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<sup>4</sup> *Id.*

<sup>5</sup> HB 765 (Krizek) and SB 402 (Reeves), enacted as Chapters 609 and 554 of the Acts of Assembly of 2022, respectively.

<sup>6</sup> *Id.*; VA. CODE § 3.2-102.

<sup>7</sup> VA. CODE § 18.2-340.16.



occasionally accompany members into the area, so long as such guests do not spend their own funds to participate in charitable gaming or electronic gaming activities conducted in the area.

### **Limits on Electronic Gaming**

Prior to the enactment of legislation during the 2022 Regular Session, electronic gaming was being conducted by charitable organizations at an increasing rate under laws and regulations that were not the most clear. Charitable gaming law did not previously define "social quarters," although the terminology was used separately from other language that described an area of a premises as being "open only to members and their guests."<sup>8</sup> In short, there were many gray areas and discrepancies in the law that allowed charitable organizations to conduct electronic gaming activities in a nonuniform manner.

Two of the larger pieces of legislation, HB 763 (Krizek) and SB 403 (Reeves),<sup>9</sup> restrict the conduct of electronic gaming to qualified social organizations in their social quarters or elsewhere on their premises or to other qualified charitable organizations that lease the premises of a qualified social organization pursuant to specific guidelines. One of the major changes made by the legislation is the elimination of the exceptions related to the sale of instant bingo, pull tabs, or seal cards or the conduct of bingo games for veterans and fraternal organizations.<sup>10</sup> As a result, such qualified organizations are now prohibited from selling instant bingo, pull tabs, or seal cards or conducting bingo games outside of their home locality and are prohibited from offering such games at an establishment that has been granted a license by the Alcoholic Beverage Control Authority unless they are the licensee. Other specifics regarding the conduct of electronic gaming by qualified organizations include the following:<sup>11</sup>

- A prohibition on qualified organizations allowing any individual younger than 21 years of age to participate in electronic gaming as well as a prohibition on any individual younger than 21 years of age participating in electronic gaming or otherwise using an electronic device to play or redeem any instant bingo, pull tabs, or seal cards.
- Social organizations and any qualified organization that leases the premises of a social organization are prohibited from advertising any electronic gaming activities to the public.
- The Department may authorize a maximum of 18 electronic gaming devices at a location with each such device bearing a mark indicating it has been authorized and approved by the Department, and the use of electronic gaming devices utilizing multiple video monitors or touchscreens is limited to one player at a time.<sup>12</sup>
- Electronic gaming is restricted to the premises of the primary location of a social organization.

### **Financial Reporting and Payment of Required Fees**

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<sup>8</sup> See subsection C of § 18.2-340.26:1 as it was enacted in Chapter 520 of the Acts of Assembly of 2021, Special Session I.

<sup>9</sup> Enacted as Chapters 767 and 722 of the Acts of Assembly of 2022, respectively.

<sup>10</sup> VA. CODE §§ 18.2-340.26:1 and 18.2:340.27.

<sup>11</sup> VA. CODE § 18.2-340.26:3.

<sup>12</sup> With the exception of the Department of Agriculture and Consumer Services now requiring each electronic gaming device to bear a mark indicating it has been authorized and approved by the Department, the rest of this statement is indicative of preexisting law.



Pursuant to charitable gaming law, as a condition of receiving a charitable gaming permit, a charitable organization must use a predetermined percentage of its gross receipts<sup>13</sup> for those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized.<sup>14</sup> Prior to the enactment of HB 763 and SB 403,<sup>15</sup> the proceeds from the sale of instant bingo, pull tabs, or seal cards sold (i) by a qualified organization, (ii) upon premises owned or exclusively and entirely leased by such organization, and (iii) at such times that the premises in which those games were sold was open only to members and their guests via controlled access were not counted as gross receipts.<sup>16</sup> As more organizations began to engage in the conduct of these types of games, this resulted in an underrepresentation of the amount of money the charitable organization was bringing in as well as how much of its gross receipts was being used for its lawful religious, charitable, community, or educational purposes.

With the enactment of HB 763 and SB 403,<sup>17</sup> the proceeds from the conduct of electronic gaming by a social organization, as well as any qualified organization that leases the premises of a social organization, are now counted as electronic gaming adjusted gross receipts and must be reported to the Department by both the organization and the electronic gaming manufacturer whose electronic gaming devices are present on the premises.<sup>18</sup> The legislation reduces the allowable audit and administration fee prescribed by the Department from 1.25 percent to 0.50 percent of electronic gaming adjusted gross receipts for electronic gaming activities and gross receipts for all other charitable gaming activities.<sup>19</sup> Additionally, with regard to electronic gaming activities only, the legislation provides that the audit and administration fee may be paid by either the qualified organization or the electronic gaming manufacturer.<sup>20</sup> The additional fee of 0.25 percent, which existed prior to the enactment of this legislation, is now (a) imposed on all gross receipts for charitable gaming activities and paid by the organization or (b) imposed on all electronic gaming adjusted gross receipts for electronic gaming activities and paid by the electronic gaming manufacturer.<sup>21</sup>

### *C. Landlord Registration and Texas Hold'em Poker Operations*

During the 2020 Regular Session, the General Assembly enacted SB 936 (Petersen),<sup>22</sup> which allows certain qualified charitable organizations to conduct Texas Hold'em poker tournaments in conjunction with their charitable gaming activities. Pursuant to that legislation, the Board was responsible for prescribing the conditions under which such an organization could manage, operate, or contract with operators of, or conduct Texas Hold'em poker tournaments.<sup>23</sup> Although

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<sup>13</sup> "Gross receipts" means the total amount of money generated by an organization from charitable gaming before the deduction of expenses, including prizes; *see* VA. CODE § 18.2-340.16.

<sup>14</sup> Subdivision A 1 of VA. CODE § 18.2-340.19.

<sup>15</sup> *See* note 9.

<sup>16</sup> *See* § 18.2-340.26:1 as it was enacted in Chapter 520 of the Acts of Assembly of 2021, Special Session I.

<sup>17</sup> *See* note 9.

<sup>18</sup> VA. CODE §§ 18.2-340.30 and 18.2-340.30:2.

<sup>19</sup> VA. CODE § 18.2-340.31.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Enacted as Chapter 982 of the Acts of Assembly of 2020.

<sup>23</sup> *Id.*



the Board finalized the Texas Hold'em poker regulations on March 23, 2021,<sup>24</sup> language enacted as part of the 2021 Special Session I budget bill would later make those regulations null and void pending a report from the Office of the State Inspector General (OSIG), in consultation with the Office of Charitable and Regulatory Programs, on the regulatory structure of charitable gaming in Virginia.<sup>25</sup>

The legislative joint subcommittee created as a result of the enactment of SB 1127<sup>26</sup> reviewed the OSIG report and heard testimony from stakeholders and other interested parties. The issue of whether individual Texas Hold'em poker games—also referred to as cash games—were lawful was raised multiple times. As a result of the work done by the legislative joint subcommittee, SB 394 (Bell)<sup>27</sup> was enacted during the 2022 Regular Session. The legislation allows the Department to promulgate regulations that require any landlord that leases to a qualified charitable organization any premises devoted wholly or in part to the conduct of bingo games or any other charitable gaming to register with the Department.<sup>28</sup> Additionally, the legislation explicitly prohibits an organization qualified to conduct Texas Hold'em poker tournaments from conducting any Texas Hold'em poker games where the game has no predetermined end time and the players wager actual money or poker chips that have cash value.<sup>29</sup> Because the legislation introduced and enacted as a result of the work done by the legislative joint subcommittee was intended to work together, there was language added in the form of a third enactment clause in HB 765 (Krizek) and SB 402 (Reeves)<sup>30</sup> that clarifies that the Texas Hold'em poker regulations promulgated by the Board on March 23, 2021,<sup>31</sup> and later rescinded by the General Assembly<sup>32</sup> shall not take effect and instead the Commissioner of Agriculture and Consumer Services shall promulgate regulations<sup>33</sup> regarding Texas Hold'em poker tournaments consistent with the provisions of the original legislation allowing for the conduct and operation of such tournaments.<sup>34</sup>

#### *D. Penalties and Enforcement Measures*

Of the topics reviewed by the legislative joint subcommittee, existing and potential conflicts of interest and the need for safeguards against illegal behavior were major topics, and there were discussions regarding proper enforcement of charitable gaming law and appropriate penalties for those individuals or organizations who violate such law. As a result of those discussions, legislation was enacted during the 2022 Regular Session that accomplishes the following:

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<sup>24</sup> Virginia Regulatory Town Hall, "Texas Hold'em Poker Tournament Regulations," <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2991>.

<sup>25</sup> HB 1800 (Torian, 2021 Special Session I), enacted as Chapter 552 of the Acts of Assembly of 2021, Special Session I, subsection D 2 of Item 105.

<sup>26</sup> See note 1.

<sup>27</sup> Enacted as Chapter 612 of the Acts of Assembly of 2022.

<sup>28</sup> VA. CODE § 18.2-340.18.

<sup>29</sup> VA. CODE § 18.2-340.33.

<sup>30</sup> Enacted as Chapters 609 and 554 of the Acts of Assembly of 2022, respectively.

<sup>31</sup> See note 24.

<sup>32</sup> See note 25.

<sup>33</sup> See note 30. ["The Commissioner of Agriculture and Consumer Services (the Commissioner) shall promulgate regulations regarding Texas Hold'em poker tournaments consistent with the provisions of Chapter 982 of the Acts of Assembly of 2020. The Commissioner's initial adoption of regulations necessary to implement the provisions of this enactment shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Commissioner shall provide an opportunity for public comment on the regulations prior to adoption."]

<sup>34</sup> See note 22.



- Provides for a civil penalty of not less than \$25,000 and not more than \$50,000 per incident for any person or organization, whether permitted or qualified pursuant to applicable charitable gaming law or not, that (i) conducts charitable gaming without first obtaining a permit to do so, (ii) continues to conduct such games after revocation or suspension of such permit, or (iii) otherwise violates any charitable gaming provisions.<sup>35</sup> The civil penalty also applies to any electronic gaming manufacturer, whether permitted pursuant to applicable charitable gaming law or not, that violates any charitable gaming provisions.<sup>36</sup>
- Establishes the Office of the Gaming Enforcement Coordinator in the Department of State Police and charges such Coordinator with coordinating local, state, and federal enforcement of gaming laws, defined as laws regulating gambling, charitable gaming, lottery games, sports betting, casino gaming, fantasy contests, and horse racing and pari-mutuel wagering, and with establishing a tip line for members of the public to report concerns about gaming activities.<sup>37</sup>
- Adds the manufacturing for sale, selling, or distribution of an illegal gaming device while knowing that such device is or is intended to be operated in violation of charitable gaming law to the list of violations for which a civil penalty may be assessed against a person who is found to have committed such violation and provides that it shall be sufficient grounds for an action for pretrial levy or seizure or an attachment that a principal defendant has violated any provision of law related to charitable gaming.<sup>38</sup>

## Conclusion

Charitable gaming was first authorized in Virginia as a legitimate source of fundraising for qualified organizations in 1973, with all regulatory and enforcement power being in the hands of local governments.<sup>39</sup> Over time, oversight of charitable gaming shifted from the localities to the state via a number of different entities, and prior to the enactment of legislation during the 2022 Regular Session,<sup>40</sup> the Board had the power to prescribe charitable gaming regulations and the Office of Charitable and Regulatory Programs within the Department's Division of Consumer Protection was tasked with overseeing charitable gaming activities.<sup>41</sup>

It is worth noting that the charitable gaming "industry" has grown tremendously from the days of bingo nights at the lodge. With the creation of new technology to replace outdated forms of even the most well-known and loved games, many charitable organizations, prior to the enactment of the 2022 legislation described in this issued brief,<sup>42</sup> had reached a point of self-

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<sup>35</sup> HB 767 (Krizek) and SB 399 (Bell), enacted as Chapters 608 and 555 of the Acts of Assembly of 2022, respectively.

<sup>36</sup> See note 9.

<sup>37</sup> HB 766 (Krizek) and SB 401 (Bell), enacted as Chapters 768 and 721 of the Acts of Assembly of 2022, respectively.

<sup>38</sup> SB 530 (Reeves) (incorporating SB 566 [McDougle]), enacted as Chapter 553 of the Acts of Assembly of 2022.

<sup>39</sup> Westfall, Michael C., Office of the State Inspector General, "Regulatory Structure Review of Charitable Gaming in Virginia," September 29, 2021, <https://www.osig.virginia.gov/media/governorvirginiagov/office-of-the-state-inspector-general/pdf/2022-PA-001.pdf>.

<sup>40</sup> See note 3.

<sup>41</sup> See note 39.

<sup>42</sup> See note 3.



regulation with regard to their charitable gaming activities as the then-existing charitable gaming laws and regulations were confusing, seemed increasingly out of touch with reality, and left organizations with more questions than answers.

With the passage of key legislation during the 2022 Regular Session,<sup>43</sup> charitable gaming law in Virginia has received a much-needed "facelift." While there will always be more that can be done, this legislation is a solid first step to making sure all qualified charitable organizations are able to conduct charitable gaming and electronic gaming activities equitably under clear laws and regulations.

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<sup>43</sup> *Id.*

