

**REPORT OF THE
CHARITABLE GAMING COMMISSION**

Fair Market Rental Value Study

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 27

**COMMONWEALTH OF VIRGINIA
RICHMOND
2001**



COMMONWEALTH of VIRGINIA

Charitable Gaming Commission

James S. Gilmore, III
Governor

*James Monroe Building
101 North 14th Street, 17th Floor
Richmond, Virginia 23219-3684*

December 27, 2000

BY HAND DELIVERY

The Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia
State Capitol, Third Floor
Richmond, Virginia 23219

To the Members of the General
Assembly of Virginia
General Assembly Building
819 Capitol Street
Richmond, Virginia 23219

RE: Report of the Charitable Gaming Commission
Fair Market Rental Value Study
House Bill 811

To the Honorable James S. Gilmore, III, Governor and the Honorable Members of the General Assembly of Virginia:

Enclosed for submission please find the Charitable Gaming Commission's *Fair Market Rental Value Study - House Bill 811* as directed by the Governor and General Assembly of Virginia.

Please note that I shall be the designated contact person regarding the enclosed Study and digital version.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Lapekas".

Stanley Lapekas
Executive Secretary

cc: House and Senate Document Processing
Division of Legislative Automated Systems
General Assembly Building, 6th Floor
Capitol Square
Richmond, Virginia 23219

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Preface

Statement of Authority

This study and associated report was conducted to satisfy the requirements of House Bill 811 (*See*. Appendix 1 – HB811 – Charitable gaming; fair market rental value, study.), enacted into law on July 1, 2000, which established a moratorium on disciplinary actions against licensed charitable gaming organization for failure to meet the use of proceeds statutory (*See*. Appendix 2 – Charitable Gaming Statute and Appendix 3 – Charitable Gaming Rules and Regulations, respectively) requirement requiring licensed charitable gaming organizations to donate a percentage of charitable gaming revenue to charitable organizations.

House Bill 811 requires the Charitable Gaming Commission to examine “Fair Market Rental Value” as follows:

- (I) The ways in which fair market rental value for both real property and the personal property used therewith for bingo games may be appropriately computed;
- (II) The ways rent for real property and any personal property used in connection with such real property for bingo games are reported or should be reported to the Commission; and
- (III) The nexus between such rents paid, the reporting of such rents, and the ability of qualified organizations, as defined by § 18.2-340.16, to meet the minimum percentages of gross receipts required to be used for those lawful religious, charitable, community, or educational purposes for which the organizations are specifically charged or organized.

Study Group

Study Group Membership

The data collection study included an evaluation of 500 licensed charitable gaming organizations. Out of that total, 160 licensed charitable gaming organizations rented their gaming facilities. There were a total of 48 out of 160 organizations that rented their facilities that failed to meet their use of proceeds (*See*. Appendix 4 – Rental Summary Per Rent Range). Three organizations were in Region 1 (Central Virginia), 32 organizations were in Region 2 (Tidewater), two organizations in Region 3 (Northern Virginia), and 11 organizations in Region 4 (Southwest Virginia).

Staff members of the Charitable Gaming Commission compiled the study and associated report. The Commission is broken down into four distinct groups: audit, licensing, enforcement/inspection, and administrative. Each operational group contributed to this study in the following ways:

Audit – Inspected annual and quarterly reports submitted to the Commission by organizations licensed to conduct charitable gaming in the Commonwealth of Virginia.

- Staff assigned: Otis Luttrell – Audit Manager
Melissa McMillion – Audit Management Analyst

Enforcement/Inspection – Conducted field surveys and interviews with game players, game managers, and commercial landlords.

- Staff Assigned: Charles Narducci – Special Agent

Licensing – Reviewed representative leases and use of proceeds.

- Staff Assigned: Michael Capen – Administrative Coordinator

Administrative Staff – Compiled supporting documentation and nationwide regulatory research.

- Staff Assigned: John B. Comstock – Chief Deputy
William Watt – Policy and Planning Specialist
Barbara Drudge – Policy and Planning Specialist

Executive Summary

The Executive Secretary been directed by the Commission to report to the Governor and General Assembly on or before January 10, 2001 on its findings and recommendations relating to House Bill 811 (*See*. Appendix 1).

The contents of this report may not reflect the views of the Commissioner’s in whole or in part, but is believed to present an accurate statistical view of a very complex and controversial subject. Based upon the results of this report, it is recommended that consideration be given to conduct an in-depth analysis of the “Fair Market Rental Value” practices within the Tidewater area.

The Commission has been asked to evaluate three issues associated with charitable gaming activities relating to licensed charitable gaming organizations. First, the Commission was asked to evaluate fair market rental value for real and personal property utilized by licensed charitable gaming organization. Secondly, the Commission was asked to evaluate methods licensed charitable gaming organizations should utilize in reporting information relating to rents associated with real and personal property. Thirdly, to evaluate the relationship between rents paid by licensed charitable gaming organizations and their ability to meet the use of proceeds requirement defined under § 18.2-340.16.

Evaluation of Fair Market Rental Value

In reviewing the statutes and regulations (*See*. Appendix 2 and 3, respectively) of the Charitable Gaming Commission, it is evident that the principle goal of the Commission is to ensure that licensed charitable organizations meet their charitable obligations which they accept as a precondition to licensing, that games be conducted reasonably, and that the playing field for all organizations is equal and that all organizations have an opportunity to use charitable gaming defined under the statutes and regulations as a means of raising revenue funds.

Statutory and regulatory law relating to the Charitable Gaming Commission does not specifically define “fair market rental value”, and the Commission does not have the authority to devise standards to protect against abuses in appraising fair market rental value. Currently, there is no way of insuring that the methods used by the landlords in appraising the fair market rental value is a fair price and not an excessive price on the property, based upon the property’s original

or constructed purpose. For your information and review, we have included a report summarizing the rental charges per region (See. Appendix 5 – Total Rent Per Region)

I. The ways in which fair market rental value for both real property and the personal property used therewith for bingo games may be appropriately computed.

The term “fair market value” generally refers to the most probable price that a property should bring in a fair sale between buyer and seller. The definition makes three assumptions. First, it presumes a competitive and open market. Second, the buyer and seller are both presumed to be acting prudently and knowledgeable. Finally, market value depends on the price not being affected by unusual circumstances.¹

As used in the context of charitable gaming, “fair market value” of real and personal property in actuality means “fair market rental value”. The methods used to determine fair market value of real property are achieved through generally accepted appraisal standards. Likewise, fair market rental value is determined through generally accepted standards. Furthermore, personal property provided to the renters, *i.e.*, blowers, monitors, and electronic number boards, would be subjected to generally accepted appraisal standards.

In the realm of charitable gaming, fair market rental value frequently becomes clouded as a result of legal opinions, existing law, and the intended use of charitable gaming revenues. Profits made by those who provide goods and services in support of charitable gaming are often looked upon as taking advantage of charitable causes for personal gain.

Previous studies involving abuses within the charitable gaming community undertaken by the Pennsylvania Crime Commission (1992), Henrico County – Final Report by Grand Jury – Section 10 (1992) (*See*, Appendix 6 – Excerpt from the Special Grand Jury’s Final Report on Bingo Operations in Henrico County – Impaneled September 30, 1992), and the Report to the Mississippi Legislature – An Evaluation of the Mississippi Gaming Commission’s Bingo Division (1997) (*See*, Appendix 7 – Excerpts from “An Evaluation of the Mississippi Gaming commission’s Bingo Division”, November 13, 1997 – The PEER Committee – Mississippi Legislature) addressed the concern of commercial bingo operators/landlords charging excessive rents. Since the formation of the Virginia Charitable Gaming Commission (July 1996), discussion regarding “excessive rent and fair market rental value” has been ongoing. Landlords defend their rent(s) as being appropriate, often expressing the phrase “willing seller, willing buyer.” In an effort to address the issue, many states have elected to regulate the landlords and enact legislation to control rent limits (*See*, Appendix 8 – Rental Summary by States – Regulation by States of Rental Prices for Charitable Gaming Organizations).

The issue of fair market rental value used in conjunction with bingo games has been examined and debated repeatedly. If generally accepted appraisal standards for determining fair market rental value are to be used within the charitable gaming community, then excessive rent issues should be investigated and left to the discretion of the appropriate commonwealth’s attorney in determining the reasonableness of the charge or charges.

¹ Modern Real Estate Practice, Fifteenth Edition, 2000 (Real Estate Education Company, Chicago)

II. The ways rents for real property and any personal property used in connection with such real property for bingo games are reported or should be reported to the Commission.

Landlords have no obligation to report to the Commission the basis for the rental of real or personal property used in conjunction with charitable gaming. The Commission has determined the many landlords/nonprofit organizations enter into rental agreements wherein the rent is established at the “high end” or maximum profit potential for both parties. When attendance is low, some landlords will adjust the rent downward. These adjustments are often based on personal property used during the gaming session. This method/philosophy is undertaken to circumvent §18.2-340-33.

§18.2-340-33. Prohibited practices. 3. No personal 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 the number of people in attendance [*emphasis added*] at such charitable games...

Currently, gaming organizations must submit a copy of their lease with the licensing application. In addition, they are required to document rent paid on the annual financial report form. At this time, there is no uniform requirement to segregate rental costs between real and personal property. Landlords are statutorily barred from taking part in any aspect of the game with the exception of providing real property to host and personal property to accommodate the play of bingo.

11 VAC 15-22-30. Permit application and exempt notification process.

G.(5) A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building, and the rent amount by each category of equipment and property rented.

11 VAC 15-22-70. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 (D) of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records that documents and identifies:

7. All operating expenses including rent, advertising and security. Copies of invoices for all such expenses shall be maintained.

11 VAC 15-22-100. Requirements regarding renting premises, agreements and landlord participation.

(A) No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.

The regulations of the Commission specifically provides that a charitable gaming license is contingent upon an organization providing, upon the initial application and upon renewal, a true copy of the lease agreement, in addition to providing any and all addendum thereto.

In light of the above referenced provisions under the Charitable Gaming Regulations, the Commission reserves the right to impose a penalty on any organization which fails to comply with the provisions of the law or these regulations (11 VAC 15-22-80 (H.)), up to and including terminating the license of any organization that fails to provide the required information regarding the terms and conditions of the lease upon which they operate charitable gaming. The burden is clearly on the charitable gaming organization to provide the initial lease upon application, upon renewal, and to provide any and all changes or addenda during the term of the contractual obligation to stay in compliance. (See. 11 VAC 15-22-30)

The Commission conducted surveys of a representative sample of bingo players and gaming organizations in the Tidewater region. The Tidewater region was selected because of the large number of renting organizations in the area.

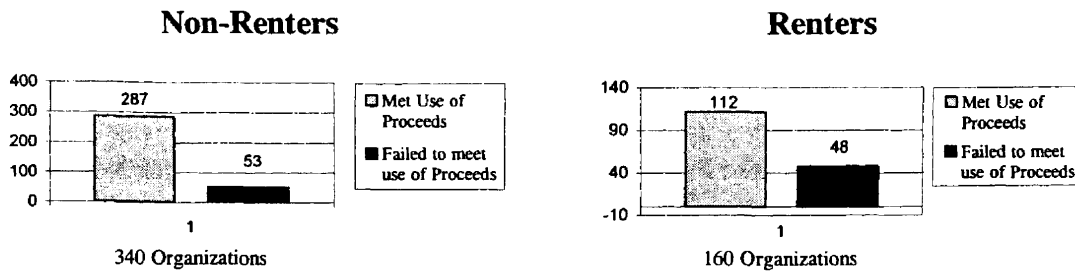
A limited survey of licensed gaming organizations in the Tidewater area indicated that there are some questionable practices in the payment and contract management of some commercial landlords. These include adjustment of rents based on attendance or other variable factors used to adjust monthly rental charges. We have included the survey and the results in this Report (See. Appendix 9 – Summary of Limited Survey of Tidewater Game Managers). However, when rent rebates are in the form of donations to the hosting organization, there are no reporting requirements.

The Commission feels that additional reporting by organizations documenting changes in rent paid, rent rebate donations to the organization by a landlord, changes in the lease agreement or in the actual practices, regardless of contractual requirements, be reported to the Commission. This will better allow the Commission to determine that actual payment to commercial landlords has been made. We feel this will not require a statutory change but can be completed with a rule change. Additional reporting by gaming organizations will help to insure that landlords and gaming organizations are in compliance with §18.2-340.33.

III. The nexus between such rents paid, the reporting of such rents, and the ability of qualified organizations, as defined in § 18.2-340.16, to meet the minimum percentages of the gross receipts required to be used for those lawful religious, charitable, community, or educational purposes for which the organizations are specifically chartered or organized.

The Commission has reviewed the performance of the charitable gaming community in the Commonwealth as related to organizations that currently rent gaming facilities and their ability to meet the "Use of Proceeds" ("UOP") as required by current statute.

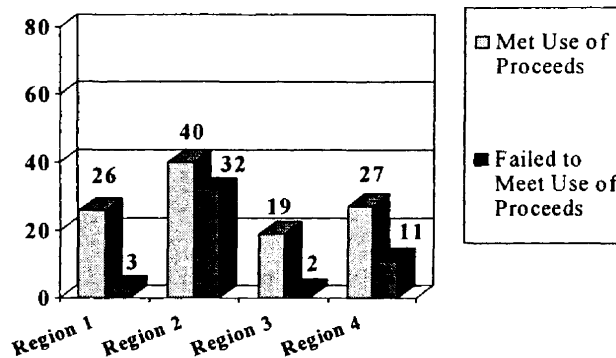
We have made the following observations: There are 160 licensed organizations that conduct charitable gaming in rented facilities and 340 (*See*. Appendix 10 –



Summary of Non-Renters) that game in their own facilities. Approximately twice as many (16% vs. 30%) renting organizations failed to meet UOP compared to organizations that own their own gaming facility.

Rents paid range from \$1.00 to over \$238,020.00 annually. Without a means of legally defining what is reasonable, the Commission is unable to ascertain "Fair Market Rent." However, the Commission believes that some rents charged are excessive.

Summary of Renters by Region - 1999
160 Organizations

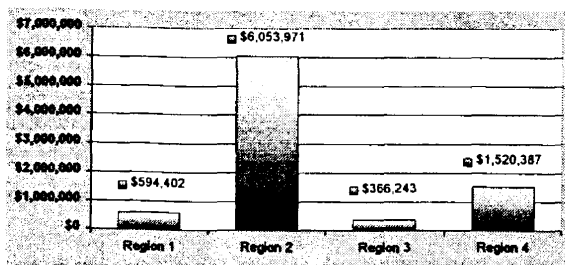


As noted in the chart above, the Tidewater region has the largest number of renting organizations failing to meet the UOP requirement. This indicates that a problem with renters meeting UOP requirements appears to be a regional problem.

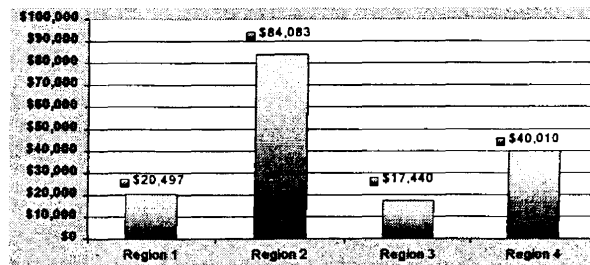
A significant number of organizations failed to meet UOP requirements due to poor game management, inexperience, inadequate training, higher-than-profitable-prize payouts, managing expenses (including rent), volunteer turnover, and failing to establish UOP requirements on a per “gaming session” basis.

From the Commission’s review of the 1999 annual reports filed licensed organizations, there appears to be a correlation between rent and the ability of an organization to meet the UOP. (*See*. Appendix 4). Appendix 4 sets out the rent charged per range. The highest rent paid by an organization was \$238,020.00 during a 12-month period. The majority of organizations that rent (70 total organizations) fall within the \$1.00 - \$24,999.00 range. Out of that group, only 11 failed to meet their UOP. In the \$200,000 - \$240,000 range two out of four organizations failed to meet their UOP. The same holds true for the \$150,000 - \$199,999 range as four out of eight organizations failed to meet their UOP. In this same range, each failure was an organization licensed

Total Rent Per Region - 1999



Total Average Rent Per Region - 1999



and operating in the Tidewater Region. The failure rate in the Tidewater Region is much higher than any other region. (*See*. Appendix 4 - Column “Number of Organizations That Did Not Meet Use of Proceeds” and Appendix 5).

It should be noted that the ability of organizations who rent and fail to meet UOP have, for the most part, been brought to the attention of the Commission by landlords (*See*. Appendix 11 - Letter dated September 19, 2000 from Ralph L. “Bill” Axelle, Jr. to the Charitable Gaming Commission). Recently proposed legislation would allow organizations that rent the ability to deduct their rent from the UOP requirement(s). This method would obviously enhance an organization's ability to meet UOP, however, the following concerns are noted:

1. Revenues designated for charity would be significantly reduced.
2. Rent applied towards UOP would allow the landlords the ability to increase the rent in proportion to any reduction realized by an organization (renter).

APPENDIX 1 – House Bill 811

HB 811 Charitable gaming; fair market rental value, study.

Patron - Johnny S. Joannou (all patrons)

Summary as passed:

Charitable gaming; fair market rental value. Establishes a moratorium on any disciplinary actions by the Charitable Gaming commission solely based on an organization's failure to meet the required minimum percentage of gross receipts required to be used for charitable purposes provided (i) that organization was conducting gaming in a rented facility prior to January 1, 2000, and (ii) the organization is otherwise in compliance with the law. In addition, the bill also prohibits the lease or rental of any premises devoted to the conduct of charitable gaming from being conditioned upon the use or the purchase of any services, products or readily portable property from any landlord or other person unless they are included in the rent being paid. The bill also directs the Commission to examine the issues related to the fair market rental value and its effect on the ability of organizations to meet the minimum percentages of gross receipts required to be used for charitable purposes and to report to the Governor and General Assembly by January 10, 2001. The bill has a July 1, 2001, sunset.

Full text:

01/21/00 House: Presented & ordered printed 003546788
02/10/00 House: Committee substitute printed 008225664-H1
03/02/00 House: Committee substitute printed 003564788-S1
03/16/00 House: Enrolled bill text (HB811ER)
05/05/00 Governor: Acts of Assembly Chapter text (CHAP1000)

Status:

01/21/00 House: Presented & ordered printed 003546788
01/21/00 House: Referred to Committee on General Laws
01/24/00 House: Assigned to General Laws sub-committee: 6
02/09/00 House: Reported from General Laws with sub (25-Y 0-N)
02/10/00 House: Committee substitute printed 008225664-H1
02/11/00 House: Read first time
02/12/00 House: Read second time
02/12/00 House: Committee substitute agreed to 008225664-H1
02/12/00 House: Engrossed by House - com. sub. 008225664-H1
02/14/00 House: Passed by for the day
02/15/00 House: Read third time and passed House (95-Y 3-N)
02/15/00 House: VOTE: PASSAGE (95-Y 3-N)
02/15/00 House: Communicated to Senate
02/16/00 Senate: Constitutional reading dispensed
02/16/00 Senate: Referred to Committee on General Laws
03/01/00 Senate: Reported from General Laws with sub (15-Y 0-N)
03/02/00 Senate: Committee substitute printed 003564788-S1
03/02/00 Senate: Const. reading disp., passed by for the day (38-Y 0-N)
03/02/00 Senate: VOTE: CONST. RDG. DISPENSED R (38-Y 0-N)
03/03/00 Senate: Read third time
03/03/00 Senate: Reading of substitute waived
03/03/00 Senate: Committee substitute agreed to 003564788-S1
03/03/00 Senate: Engrossed by Senate - comm. sub. 003564788-S1
03/03/00 Senate: Passed Senate with substitute (39-Y 0-N)
03/03/00 Senate: VOTE: PASSAGE R (39-Y 0-N)
03/06/00 House: Placed on Calendar
03/07/00 House: Senate substitute agreed to by House (89-Y 9-N)
03/07/00 House: VOTE: ADOPTION (89-Y 9-N)
03/16/00 House: Enrolled bill text (HB811ER)
03/22/00 House: Enrolled
03/22/00 Senate: Signed by President
03/24/00 House: Signed by Speaker
04/09/00 Governor: Approved by Governor-Chapter 1000 (effective 7/1/00)
05/05/00 Governor: Acts of Assembly Chapter text (CHAP1000)

APPENDIX 2 – Charitable Gaming Statute – Effective July 1, 1999

Article 1.1:1.

Charitable Gaming.

§ 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. The Charitable Gaming Commission is vested with control of all charitable gaming in the Commonwealth, with plenary 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 which may be granted or denied by the Charitable Gaming Commission or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.

(1995, c. 837.)

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

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

For the purpose of this article, *"raffle"* shall include the use of individually prepackaged cards made completely of paper or paper products, with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses, such cards being commonly referred to as "pull tabs" or "seal cards" which conceal 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.

"Reasonable and proper business expenses" means business expenses actually incurred by a qualified organization and not otherwise allowed under this article or under Commission 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.

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

(1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, cc. 57, 398; 1999, c. 534.)

§ 18.2-340.17. Charitable Gaming Commission established.

- A. There is hereby established, in the Office of the Secretary of Administration, the Charitable Gaming Commission. The Commission shall consist of seven members appointed by the Governor, subject to confirmation by the General Assembly. Each member of the Commission shall have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office. To the extent practicable, the Commission shall consist of individuals from different geographic regions of the Commonwealth. Upon initial appointment, three members shall be appointed for four-year terms, two for three-year terms, and two for two-year terms. Thereafter, all members shall be appointed for four-year terms. Vacancies shall be filled by the Governor in the same manner as the original appointment for the unexpired portion of the term. Each Commission member shall be eligible for reappointment for a second consecutive term at the discretion of the Governor. Persons who are first appointed to initial terms of less than four years shall thereafter be eligible for reappointment to two consecutive terms of four years each. The Commission shall elect a chairman from among its members. No member of the General Assembly while serving as a member shall be eligible for appointment to the Commission.
- B. The members of the Commission shall serve at the pleasure of the Governor.
- C. Each member of the Commission shall receive fifty dollars for each day or part thereof spent in the performance of his duties and in addition shall be reimbursed for his reasonable expenses incurred therein.
- D. A quorum shall consist of four members. The decision of a majority of those members present and voting shall constitute a decision of the Commission.
- E. The Commission shall adopt rules and procedures for the conduct of its business. The Commission shall establish and maintain a business office within the Commonwealth at a place to be determined by the Commission. The Commission shall meet at least six times a year, and other meetings may be held at any time or place determined by the Commission or upon call of the chairman or upon a written request to the chairman by any two members. All members shall be duly notified of the time and place of any regular or other meeting at least ten days in advance of such meetings.
- F. The Commission shall keep a complete and accurate record of its proceedings. A copy of the record shall be available for public inspection and copying.

(1995, c. 837.)

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

The Commission 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 Commission 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 Commission. The Commission may designate such agents and employees as it deems necessary and appropriate to be vested with like power to enforce the provisions of this article and the criminal laws of the Commonwealth as is vested in the chief law-enforcement officer of any county, city or town.
2. The Commission, 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 Commission may compel the production of any books, documents, records, or memoranda of any organizations or supplier for the purpose of satisfying itself that this article and its regulations are strictly complied with. In addition, the Commission 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 Commission shall promulgate regulations under which charitable gaming shall be conducted in the Commonwealth and all such other regulations that it deems necessary and appropriate to effect the purposes of this article. Such regulations may include penalties for violations. The regulations shall be subject to the Administrative Process Act (§ 9-6.14:1 et seq.).
5. The Commission 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 Commission, it is necessary to do so for the effectual discharge of its duties.
6. The Commission may compel any person holding a permit to file with the Commission such documents, information or data as shall appear to the Commission to be necessary for the performance of its duties.
7. The Commission may enter into arrangements with any governmental agency of this or any other state or any locality in the Commonwealth for the purposes of exchanging information or performing any other act to better ensure the proper conduct of charitable gaming.
8. The Commission may issue interim certification of tax-exempt status and collect a fee therefor in accordance with subsection B of § 18.2-340.24.
9. The Commission shall report annually to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Commission and any recommendations for legislation applicable to charitable gaming in the Commonwealth.

10. The Commission, its agents and employees may conduct such audits, in addition to those required by § 18.2-340.31, as they deem necessary and desirable.
11. The Commission may limit the number of organizations for which a person may manage, operate or conduct charitable games.
12. The Commission may report any alleged criminal violation of this article to the appropriate attorney for the Commonwealth for appropriate action.
13. The Commission may, by regulation, approve variations to the card formats for bingo games provided such variations result in bingo games which are conducted in a manner consistent with the provisions of this article. Commission-approved variations may include, but are not limited to, bingo games commonly referred to as player selection games and 90-number bingo.

(1995, c. 837; 1997, cc. 777, 838.)

§ 18.2-340.19. Regulations of the Commission.

The Commission shall adopt regulations which:

1. Require, as a condition of receiving a permit, that the applicant use a predetermined percentage of its gross receipts for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes. The regulation may provide for a graduated scale of percentages of gross receipts to be used in the foregoing manner based upon factors the Commission finds appropriate to and consistent with the purpose of charitable gaming.
2. Require the organization to have at least fifty percent of its membership consist of residents of the Commonwealth and specify the conditions under which a complete list of the organization's members who participate in the management, operation or conduct of charitable gaming may be required in order for the Commission to ascertain the percentage of Virginia residents; however, if an organization (i) does not consist of bona fide members and (ii) is exempt under § 501 (c) (3) of the United States Internal Revenue Code, the Commission shall exempt such organizations from the regulations adopted pursuant to this subdivision.

Membership lists furnished to the Commission in accordance with this subdivision 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.).

3. Prescribe fees for processing applications for charitable gaming permits. Such fees may reflect the nature and extent of the charitable gaming activity proposed to be conducted.
4. Establish requirements for the audit of all reports required in accordance with § 18.2-340.30.
5. Define electronic and mechanical equipment used in the conduct of charitable gaming.
6. Prescribe the conditions under which a qualified organization may (i) provide food and nonalcoholic beverages to its members who participate in the management, operation or conduct of bingo and (ii) permit members who participate in the management, operation or conduct of bingo to play bingo.

7. Prescribe the conditions under which a qualified organization located in the Northern Virginia Planning District may sell raffle tickets for a raffle drawing which will be held outside the Commonwealth pursuant to subsection C of § 18.2-340.26.
8. Prescribe the conditions under which persons who are bona fide members of a qualified organization or a child, above the age of eleven years, of a bona fide member of such organization may participate in the conduct or operation of bingo games.
9. Prescribe the conditions under which a person below the age of eighteen years may play bingo, provided such person (i) has the consent of his parent or legal guardian or (ii) is accompanied by his parent or legal guardian.
10. Require all qualified organizations that are subject to Commission regulations to post in a conspicuous place in every place where charitable gaming is conducted a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers.

(1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, c. 845.)

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

- A. The Commission 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 Commission. The action of the Commission in denying, suspending, or revoking any permit shall be subject to the Administrative Process Act (§ 9-6.14:1 et seq.).
- B. Except as provided in §§ 18.2-340.30 and 18.2-340.36, no permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for the hearing. At the discretion of the Commission, 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 Commission 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 Commission.
- C. Any person aggrieved by a refusal of the Commission to issue any permit, the suspension or revocation of a permit, or any other action of the Commission, may seek review of such action in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

(1995, c. 837; 1996, c. 573; 1997, cc. 777, 838.)

§ 18.2-340.21. Executive Secretary; staff.

The Commission shall appoint an Executive Secretary and such other employees as it deems essential to perform its duties under this article, who shall possess such authority and perform such duties as the Commission shall prescribe or delegate to them. Such employees shall be compensated as provided by the Commission.

The Executive Secretary, in addition to any other duties prescribed by the Commission, shall keep a true and full record of all proceedings of the Commission and preserve at the Commission's principal office all books, documents and papers of the Commission.

(1995, c. 837.)

§ 18.2-340.22. Only raffles, bingo and instant bingo games permitted; prizes not gaming contracts.

- A. This article permits qualified organizations to conduct raffles, bingo and instant bingo games. All games not explicitly authorized by this article or Commission regulations adopted in accordance with § 18.2-340.18 are prohibited.
- B. The award of any prize money for any charitable game shall not be deemed to be part of any gaming contract within the purview of § 11-14.
- C. Nothing in this article shall prohibit an organization from using the State Lottery Department's Pick3 number or any number or other designation selected by the State Lottery Department in connection with any lottery, as the basis for determining the winner of a raffle.

(1995, c. 837; 1997, cc. 777, 838.)

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

- A. No organization that reasonably expects, based on prior charitable gaming annual results or any other quantifiable method, to realize gross receipts of \$25,000 or less in any twelve-month period shall be required to (i) notify the Commission of its intention to conduct charitable gaming, (ii) file a resolution of its board of directors as required by subsection B, or (iii) comply with Commission regulations. If any organization's actual gross receipts for the twelve-month period exceed \$25,000, the Commission may require the organization to file by a specified date the report required by § 18.2-340.30.
- B. Any volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.1-26.01 by an ordinance or resolution of the political subdivision where the volunteer fire department or rescue squad is located as being part of the safety program of such political subdivision shall be exempt from the requirements of § 18.2-340.25 if, prior to conducting charitable gaming, it notifies the Commission, on a form prescribed by the Commission, that it will conduct charitable gaming. The organization must receive notification of its exempt status from the Commission prior to conducting charitable gaming. Any such organization also shall be exempt from the financial reporting requirements of this article and the payment of audit fees but shall file with the Commission, at such time as may be required by the Commission, a resolution of its board of directors stating that the organization has complied with the provisions of this article. Nothing in this subsection shall be construed as exempting volunteer fire departments and rescue squads from any other provisions of this article or other Commission regulations.
- C. Nothing in this section shall prevent the Commission from conducting any investigation or audit it deems appropriate to ensure an organization's compliance with the provisions of this article and, to the extent applicable, Commission regulations.

(1995, c. 837; 1997, cc. 777, 838.)

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

- A. To be eligible for a permit to conduct charitable gaming, an organization shall:
 - 1. Have been in existence and met on a regular basis in the county, city or town or in a county, city or town adjacent to the county, city or town wherein the organization proposes to conduct charitable gaming for a period of at least three years immediately prior to applying for a permit.

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

2. Be operating currently and have always been operated as a nonprofit organization.
- B. Any organization whose gross receipts from all charitable gaming exceeds or can be expected to exceed \$75,000 in any calendar year shall have been granted tax-exempt status pursuant to § 501 (c) of the United States Internal Revenue Code. At the same time tax-exempt status is sought from the Internal Revenue Service, the same documentation may be filed with the Commission for an interim certification of tax-exempt status. If such documentation is filed, the Commission may, after reviewing such documentation it deems necessary, issue its determination of tax-exempt status within sixty days of receipt of such documentation. The Commission may charge a reasonable fee, not to exceed \$500. This interim certification of tax-exempt status shall be valid until the Internal Revenue Service issues its determination of tax-exempt status, or for eighteen months, whichever is earlier.
 - C. A permit shall be valid only for the locations designated in the permit.

(1995, c. 837; 1996, c. 919.)

§ 18.2-340.25. Permit required; application fee; form of application.

- A. Except as provided for in § 18.2-340.23, prior to the commencement of any charitable game, an organization shall obtain a permit from the Commission.
- B. All complete applications for a permit shall be acted upon by the Commission within forty-five days from the filing thereof. Upon compliance by the applicant with the provisions of this article, and at the discretion of the Commission, a permit may be issued. All permits when issued shall be valid for the period specified in the permit unless it is sooner suspended or revoked. No permit shall be valid for longer than two years. The application shall be a matter of public record.

All permits shall be subject to regulation by the Commission to ensure the public safety and welfare in the operation of charitable games. The permit shall only be granted after a reasonable investigation has been conducted by the Commission.

- C. In no case shall an organization receive more than one permit allowing it to conduct charitable gaming; however, nothing in this section shall be construed to prohibit granting special permits pursuant to § 18.2-340.27.
- D. Application for a charitable gaming permit shall be made on forms prescribed by the Commission and shall be accompanied by payment of the fee for processing the application.

(1995, c. 837; 1997, cc. 777, 838; 1999, c. 361.)

§ 18.2-340.26. Sale of raffle tickets; drawings.

- A. Except as provided in subsection C, a qualified organization may sell raffle tickets both in and out of the jurisdiction designated in its permit and shall conduct the drawing within the Commonwealth.
- B. Pull tabs or seal cards used as part of a raffle as defined in § 18.2-340.16 may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull tabs or seal cards are sold is open only to members and their guests.
- C. A qualified organization located in the Northern Virginia Planning District may sell raffle tickets for a raffle drawing which will be held outside the Commonwealth, provided the raffle is conducted in accordance with (i) the regulations of the Commission and (ii) the laws and regulations of the jurisdiction in which the raffle drawing will be held.

(1995, c. 837; 1997, cc. 777, 838.)

§ 18.2-340.27. Conduct of bingo games; special permits.

- A. A qualified organization shall accept only cash or, at its option, checks in payment of any charges or assessments for players to participate in bingo games. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in bingo games.
- B. 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 bingo games.
- C. Bingo games may be held by qualified organizations no more frequently than two calendar days in any calendar week, except in accordance with subsection D.
- D. A special permit may be granted a qualified organization which entitles it to conduct more frequent operations of bingo games during carnivals, fairs and other similar events which are located in the jurisdiction designated in the permit.

(1995, c. 837.)

§ 18.2-340.28. Conduct of instant bingo.

- A. Any organization qualified to conduct bingo games pursuant to the provisions of this article may play instant bingo as a part of such bingo game and only at such location and at such times as designated in the permit for regular bingo games.
- B. Any organization conducting instant bingo shall maintain a record of the date, quantity and card value of instant bingo supplies purchased as well as the name and address of the supplier of such instant bingo supplies. The organization shall also maintain a written invoice or receipt from a nonmember of the organization verifying any information required by this subsection. Instant bingo supplies shall be paid for only by check drawn on an account of the organization. During the conduct of instant bingo, the supplier's invoice, or a legible true copy thereof, for the instant bingo supplies being used shall be maintained by the organization on the premises where the instant bingo is being conducted.
- C. No qualified organization shall sell any instant bingo card to any individual under eighteen years of age.

(1995, c. 837; 1997, cc. 777, 838.)

§ 18.2-340.29. Joint operation of bingo games; written reports; special permit required.

- A. Any two qualified organizations may jointly organize and conduct bingo games provided both have fully complied with all other provisions of this article.
- B. Any two qualified organizations jointly conducting such games shall be (i) subject to the same restrictions and prohibitions contained in this article that would apply to a single organization conducting bingo games and (ii) required to furnish to the Commission a written report setting forth the location where such games will be held, the division of manpower, costs, and proceeds for each game to be jointly conducted.

Upon a finding that the division of manpower and costs for each game bears a reasonable relationship to the division of proceeds, the Commission shall issue a special permit for the joint conduct of all approved games.

- C. No bingo game shall be jointly conducted until the special permit issued pursuant to subsection B is obtained by the organizations.

(1995, c. 837.)

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

- A. Each qualified organization shall keep a complete record of all receipts from its charitable gaming operation and all disbursements related to such operation. Except as provided in § 18.2-340.23, each qualified organization shall file at least annually, on a form prescribed by the Commission, a report of all such receipts and disbursements, the amount of money on hand attributable to charitable gaming as of the end of the period covered by the report and any other information related to its charitable gaming operation that the Commission may require. In addition, the Commission, by regulation, may require any qualified organization whose receipts exceed a specified amount during any three-month period to file a report of its receipts and disbursements for such period. All reports filed per this section shall be a matter of public record.
- B. All reports required by this section shall be acknowledged in the presence of a notary public and filed on or before the date prescribed by the Commission.
- C. Except as provided in § 18.2-340.23, each qualified organization shall designate an individual who shall be responsible for filing an annual, and, if required, quarterly, financial report if the organization goes out of business or otherwise ceases to conduct charitable gaming activities. The Commission shall require such reports as it deems necessary until all proceeds of any charitable gaming have been used for the purposes specified in § 18.2-340.19 or have been disbursed in a manner approved by the Commission.
- D. Each qualified organization shall maintain (i) for three years a written record of the dates on which bingo games are played, the number of people in attendance on each date and the amount of the gross receipts and prizes paid on each day; (ii) a record of the name and address of each individual to whom a regular or special bingo game prize or jackpot from the playing of bingo is awarded, as well as the amount of the award; and (iii) an itemized record of all receipts and disbursements, including operating costs and use of proceeds incurred in operating bingo games.
- E. The failure to file reports within thirty 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 Commission may grant an extension of time for filing such reports for a period not to exceed forty-five days if requested by an organization, provided the organization requests an extension within fifteen days of the time such reports are due. 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.

(1995, c. 837; 1997, cc. 777, 838; 1999, c. 360.)

§ 18.2-340.31. Audit of reports; exemption; audit and administration fee.

- A. Except as provided in § 18.2-340.23, all reports filed pursuant to § 18.2-340.30 shall be subject to audit by the Commission in accordance with Commission regulations. The Commission may engage the services of independent certified public accountants to perform any audits deemed necessary to fulfill the Commission's responsibilities under this article.
- B. The Commission shall prescribe a reasonable audit and administration fee to be paid by any organization conducting charitable gaming under a permit issued by the Commission unless the organization is exempt from such fee pursuant to § 18.2-340.23. Such fee shall not exceed one and one-half percent of the gross receipts which an organization reports pursuant to § 18.2-340.30. Beginning July 1, 1998, the audit and administration fee charged by the Commission shall not exceed one and one-quarter percent of the gross receipts which an organization reports pursuant to § 18.2-340.30. The audit and administration fee shall accompany each annual report or each three-month report if such report is required by the Commission pursuant to § 18.2-340.30.
- C. The audit and administration fee shall be payable to the Commission. All such fees received by the Commission shall be separately accounted for and shall be used only for the purposes of auditing and regulating charitable gaming.

(1995, c. 837; 1997, cc. 777, 838.)

§ 18.2-340.32. Authority of local governments; proceeds exempt from local taxation.

- A. The governing body of any county, city or town may adopt an ordinance consistent with this article and the regulations of the Commission which (i) prohibits the playing of instant bingo and (ii) establishes reasonable hours during which bingo games may be played within such jurisdiction. If the governing body of any town adopts an ordinance pursuant to the provisions of this section, such town shall not be subject to any ordinance adopted by the county within which such town lies.
- B. No governing body of any county, city or town may impose a gross receipts, entertainment, admission or any other tax based on revenues of qualified organizations derived from the conduct of charitable gaming.

(1995, c. 837; 1997, cc. 777, 838; 1998, c. 679.)

§ 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) (3), (7) or (10) of the Internal Revenue Code and (b) the membership of the qualified organization is identical to such holding entity.

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

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

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

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, 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.

(1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, cc. 57, 398; 1999, c. 534.)

§ 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 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 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.).

(1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1999, c. 534.)

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

The Department of the State Police, upon request of the Commission, shall assist in the conduct of investigations by the Commission.

(1995, c. 837.)

§ 18.2-340.36. Suspension of permit.

- A. When any officer charged with the enforcement of the charitable gaming laws of the Commonwealth has reasonable cause to believe that the conduct of charitable gaming is being conducted by an organization in violation of this article or the regulations of the Commission, he may apply to any judge, magistrate, or other person having authority to issue criminal warrants for the immediate suspension of the permit of the organization conducting the bingo game or raffle. If the judge, magistrate, or person to whom such application is presented is satisfied that probable cause exists to suspend the permit, he shall suspend the permit. Immediately upon such suspension, the officer shall notify the organization in writing of such suspension.
- B. Written notice specifying the particular basis for the immediate suspension shall be provided by the officer to the organization within one business day of the suspension and a hearing held thereon by the Commission or its designated hearing officer within ten days of the suspension unless the organization consents to a later date. No charitable gaming shall be conducted by the organization until the suspension has been lifted by the Commission or a court of competent jurisdiction.

(1995, c. 837.)

§ 18.2-340.37. Criminal penalties.

- A. Any person who violates the provisions of this article or who willfully and knowingly files, or causes to be filed, a false application, report or other document or who willfully and knowingly makes a false statement, or causes a false statement to be made, on any application, report or other document required to be filed with or made to the Commission shall be guilty of a Class 1 misdemeanor.
- B. Each day in violation shall constitute a separate offense.

(1995, c. 837; 1996, c. 919.)

§ 18.2-340.38. Transitional provisions.

- A. In order to implement the statewide regulation of charitable gaming expeditiously, rules and regulations shall be adopted by the Commission but shall not be subject to the Administrative Process Act (§ 9-6.14:1 et seq.) during the first twenty-four-month period following the earliest effective date of any portion of this article. Thereafter, all rules and regulations shall fully comply with the provisions of the Administrative Process Act.
- B. The Commission may issue temporary licenses upon conditions as it deems necessary, subject however to all limitations set forth in this article, for a term which shall not extend beyond one year after the latest effective date of any portion of this article.

(1995, c. 837; 1996, c. 919.)

APPENDIX 3 – Charitable Gaming Rules and Regulations – Effective January 1, 1998

Chapter 22

CHARITABLE GAMING RULES AND REGULATIONS

Effective Date: January 1, 1998

Part I

DEFINITIONS

11 VAC 15-22-10. Definitions. In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Address of record” means an address provided to the commission on a permit application or exempt notification form or the most recent address on the commission’s files.

“Board of directors” means the board of directors, managing committee or other supervisory body of a qualified organization.

“Building” means a structure enclosed by continuous exterior walls regardless of the configuration of the interior walls.

“Bundled pull-tabs” means certain pull-tabs, commonly referred to as “jar tickets,” “guppies,” etc., which are taped or stapled together and sold as one unit.

“Calendar day” means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

“Calendar week” means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

“Cash” means United States currency or coinage.

“CGC number” means a unique identification number issued by the commission.

“Commission” means the Virginia Charitable Gaming Commission.

“Concealed face bingo card” means a non-reusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as “Tear-open,” “Bonanza Bingo,” “Bullseye” and “Fortune Cards.”

“Daubing” means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

“Deal” means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

“Designator” means an object used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

“Discount” means any reduction in cost of admission or game packs via use of coupons, free packs or other similar methods.

“Disinterested player” means a player who is unbiased.

“Disposable paper card” means a nonreusable, paper bingo card manufactured with pre-printed numbers.

“Door prize” means any prize awarded by the random drawing or random selection of a name or number taken from any entry or admission ticket.

“Electronic bingo device” means an electronic device which displays facsimiles of bingo cards and allows a player to daub such cards.

“Electronic verification” means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains pre-programmed software for this purpose.

“Equipment and video systems” includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

“Fiscal year” or “annual reporting period” means the twelve month period beginning October 1st of any given year and ending September 30th of the following year.

“501(c) organization” means any organization that is tax exempt under 26 USC § 501(c) (3), (4), (8), (10) or (19).

“Flare” means a piece of paper, cardboard or similar material which bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

“Free space number,” “perm number,” “center number,” “card number” or “face number” means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

“Game program” means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.

“Immediate family” means one’s spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law or stepchild.

“Interested parties” means the president, an officer or bingo manager of any qualified organization which is exempt or is a permit applicant or holds a permit or exempt authorization to conduct charitable gaming or the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

“Management” means the provision of oversight and supervision.

“Manufacturer” means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. “Manufacturer” also means a person who modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

“Operating costs” means charitable gaming fund disbursements for reasonable and proper expenses incurred in the conduct of charitable gaming including, but not limited to, costs of publicizing the time, date and location of charitable gaming; utilities; rent; prizes; professional fees; audit and administration or permit fees; and gaming supplies.

“Operation” or “conduct” means the authority for check writing, approval of expenses of charitable gaming funds, purchase of charitable gaming supplies, negotiation of contracts or leases, or services as a volunteer worker or assistant.

“Owner” means any individual with financial interest of 10% or more in a supplier.

“Packet” means sheets of bingo paper assembled in the order of games to be played. This may or may not include specials, winner-take-alls and jackpots.

“Person” means an individual, corporation, partnership, association, governmental body, municipal corporation or other legal entity.

“Prize” means cash, merchandise, certificate or other item of value awarded to a winning player.

“Progressive seal card game” means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

“Pull-tabs” means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.

“Random selection” or “randomly selected” means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.

“Remuneration” means payment in cash or the provision of anything of value for goods provided or services rendered.

“Seal card” means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

“Selection device” means a device that is operated manually or mechanically to randomly select bingo numbers.

“Serial number” means a unique number printed by the manufacturer on each bingo card in a set or each instant bingo or pull-tab card in a deal.

“Series number” means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

“Session” means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

“Set” means the bingo cards contained within each series number.

“Special permit” means a permit granted to a qualified organization to allow the organization to conduct more frequent operation of bingo games during carnivals, fairs or other similar public amusement events of limited duration.

“Use of proceeds” means the use of funds derived by an organization from its charitable gaming activities which are disbursed for those lawful religious, charitable, community or educational purposes. This includes 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.

Part II PERMITS, EXEMPT NOTIFICATIONS, REGISTRATION CERTIFICATES

11 VAC 15-22-20. Eligibility for permit; when valid; permit requirements.

- A. The conduct of charitable gaming is a privilege which may be granted or denied by the commission. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization and volunteer fire department and

rescue squad with anticipated gross gaming receipts of \$25,000 or more annually shall obtain a permit or exempt authorization number from the commission prior to the commencement of authorized charitable gaming activities.

- B. Upon the organization's request and pursuant to § 18.2-340.24 (B) of the Code of Virginia, the commission shall review a tax exempt request submitted to the IRS for a tax exempt status determination. A non-refundable fee of \$250 shall be charged for this review.
- C. A permit or exempt authorization shall be valid only for activities, locations, days, dates and times as listed on the permit or exempt authorization.
- D. In accordance with § 18.2-340.19 (1) of the Code of Virginia, as a condition of receiving a permit or exempt authorization, the following minimum percentage of charitable gaming gross receipts shall be used for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes:

For the fiscal year beginning October 1, 1997:

For organizations with annual gross receipts less than \$ 150,000	4%
For organizations with annual gross receipts between \$ 150,000 and \$500,000	6%
For organizations with annual gross receipts over \$500,000	9%

For the fiscal year beginning October 1, 1998, and later fiscal years:

For organizations with annual gross receipts less than \$ 150,000	5%
For organizations with annual gross receipts between \$ 150,000 and \$500,000	10%
For organizations with annual gross receipts over \$500,000	12%

Unless an organization has derived no gross receipts in the prior fiscal year, the gross receipts of the most recently completed fiscal year shall be used to determine the applicable percentage for the use of proceeds requirement. An organization with no prior charitable gaming activity shall be subject to a 5.0% minimum use of proceeds requirement.

- E. If an organization fails to meet its minimum use of proceeds requirement, its permit shall be suspended or revoked based on the deficiency in use of proceeds of according to the following schedule:

<u>Deficiency</u>	<u>First Failure</u>	<u>Second Failure</u>
Less than 2.0%	10 days	20 days
2.0-5.0%	20 days	40 days
Over 5.0%	30 days	60 days

If an organization fails to meet the minimum use of proceeds requirement three times, its permit shall be revoked.

- F. Notwithstanding the provisions of subsection E of this section, if an organization is within less than one percentage point of the minimum use of proceeds requirement for a given fiscal year, it may request a one-time approval to make up the deficiency (in dollars) in the following fiscal year. If such approval is granted, the deficiency will be added to the percentage requirement for the following year and the permit shall not be suspended.

Failure to meet the required percentage in the year following such approval shall result in a 30 day suspension.

- G. An organization whose permit is revoked for failure to comply with provisions set forth in subsection D of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The Commission, at its discretion, may issue the permit if it is satisfied that the organization has made substantial changes to its management, operations or both.

11 VAC 15-22-30. Permit application and exempt notification process.

- A. Organizations anticipating gross gaming receipts of \$25,000 or more (except volunteer fire departments and rescue squads) shall complete a commission-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. The application shall be accompanied by a non-refundable fee payable to the Treasurer of Virginia in the amount of \$200.

The commission may also issue permits for periods of less than one year. Fees for such permits shall be prorated and rounded off to the nearest \$50 per quarter.

- B. Volunteer fire departments and rescue squads anticipating gross receipts of \$25,000 or more shall file a commission-prescribed exempt notification form to request an authorization to conduct charitable gaming.
- C. The commission may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or applicable regulations of the commission or both. The commission may decline to issue an exempt notification number to volunteer fire departments and rescue squads failing to meet the requirements of § 18.2-340.23 of the Code of Virginia.
- D. Permit holders requiring a Special Permit shall convey their request in the form of a letter to the commission. There shall be a \$50 fee for special permits.
- E. Permits and exempt authorizations shall be valid for a period of one year from the date of issuance or for the period specified on the permit or authorization.
- F. Permits shall be granted only after a background investigation of an organization or interested parties, or both, to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity and the potential harm to public safety and welfare of any criminal offense(s). The investigation may include, but shall not be limited to, the following:

- 1. A search of Virginia criminal history records for all officers of the organization and members who serve as game managers. Information and authorization to conduct these records checks shall be provided in the permit application. Applications may be denied if any game manager or officer has been convicted within 10 years preceding the date of application for any:
 - a. Felony involving fraud, theft or financial crimes; or
 - b. Misdemeanor crimes involving moral turpitude.

In addition, any felony conviction involving fraud, theft or financial crimes, regardless of age, may result in denial of application.

- 2. An inquiry as to whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years;
- 3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating or conducting any charitable gaming activity;
- 4. Inquiries into the finances and activities of an organization and the sources and uses of funds; and
- 5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization.

- G. The permit application shall include:
1. A list of members participating in the conduct of charitable gaming;
 2. A copy of the Articles of Incorporation, By-Laws, Charter, Constitution or other appropriate organizing document;
 3. A copy of the determination letter issued by the IRS under Section 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling;
 4. A copy of the organization's most recent annual financial statement and balance sheet;
 5. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building, and the rental amount by each category of equipment or property rented; and
 6. An authorization by an officer or other appropriate official of an organization to permit the commission to determine whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years.
- H. Copies of minutes of meetings of an organization and any contracts with landlords or suppliers to which the organization is, or may be a party, may be requested by the commission prior to rendering a permitting decision.
- I. Copies of amendments to an organization's Articles of Incorporation, By-Laws, Charter, Constitution or other organizing document, as they occur, shall be submitted to the commission.
- J. Organizations applying to renew a permit previously issued by the commission shall submit Articles of Incorporation, By-Laws, Charter, Constitution or other organizing document and IRS determination letter only if there are any amendments or changes to these documents. The most recent financial statements, information on officers and an IRS tax waiver form shall also be filed with a renewal application.
- K. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia and special permits as provided in § 18.2-340.27 of the Code of Virginia:
1. In the case of a joint game between a volunteer fire department or rescue squad and an organization not exempt from permit requirements, both shall file the exempt notification form and permit application respectively. Benefits extended by regulation or the Code of Virginia to a volunteer fire department or rescue squad shall not extend to a non-exempt organization solely due to operation of a joint game.
 2. The non-refundable permit fee for joint games shall be a total of \$200.
 3. A single permit shall be issued in the names of both organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.
 4. No charitable gaming shall be conducted prior to the issuance of a joint permit or joint exemption number.
 5. Applications for joint games shall include an explanation of the division of manpower, costs and proceeds for the joint game.
- L. An organization wishing to permanently change dates, times or locations of its charitable gaming shall request a change in the permit.

- M. No more than six temporary changes in dates or times due to inclement weather, special events or holidays may be made in a permit year without a permanent change in the permit.
- N. Change requests shall be made in writing at least 30 days in advance of the proposed effective date.
- O. A non-refundable fee of \$50, payable to the Treasurer of Virginia, shall be submitted with a request for a permanent permit change. The fee shall not be charged for temporary changes as described in subsection M or to changes in permits due to an addition or removal of a charitable gaming activity.
- P. An organization located in the Northern Virginia Planning District may sell raffle tickets for a drawing to be held in another state in the United States provided:
 - 1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization which is licensed to conduct raffles outside the Commonwealth of Virginia;
 - 2. The raffle is conducted in accordance with the laws of the state where the drawing is to be held; and
 - 3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the commission.

Part III

CONDUCT OF GAMES, RULES OF PLAY, ELECTRONIC BINGO

11 VAC 15-22-40. Conduct of bingo, instant bingo and raffles.

- A. Organizations subject to this chapter shall post their permit or exempt authorization at all times on the premises where charitable gaming is conducted.
- B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.
- C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. An organization's house rules may limit the play of bingo by minors.
- D. Individuals under the age of eighteen may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.
- E. No individual under the age of 11 may participate in the management, operation or conduct of bingo games. Individuals 11 through 17 years of age may participate in the conduct or operation of a bingo game provided the organization permitted for charitable gaming obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of such youth. An organization's house rules may limit the involvement of minors in the operation or conduct of bingo games.
- F. Family members and surviving spouses of deceased bona fide members may participate as volunteer game workers.
- G. All volunteer workers, including non-member spouses, shall have in their possession a picture identification, such as a driver's license, while participating in the management, operation or conduct of a bingo game.
- H. There shall be a game manager or person in charge present any time a bingo game is conducted.
- I. Organizations shall ensure that all charitable gaming equipment is in working order before charitable gaming activities commence.

- J. Any organization selling instant bingo, pull-tab raffles or seal cards shall:
 1. Maintain a supplier's invoice or a legible copy thereof at the location where the gaming is taking place and cards are sold. The original invoice or legible copy shall be stored in the same storage space as the supply of pull-tab, instant bingo or seal cards; and
 2. Pay for instant bingo, pull-tab or seal card supplies only by a check drawn on the charitable gaming account of the organization.
- K. A volunteer working a bingo session may receive complimentary food and non-alcoholic beverages for consumption on premises, provided the retail value of such food and beverages does not exceed \$8.00 for each session.
- L. Individuals employed by an organization to work in the private social quarters open only to members and guests may sell seal cards or pull-tab cards provided they are members who are not directly compensated for the sale of these products.
- M. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of financial reports.
- N. Except for individuals identified in subsections K and M above and individuals allowed by law to be compensated for providing assistance to organizations for the deaf and blind, no free packs, free electronic bingo devices, discounts or remuneration in any other form shall be provided directly or indirectly to volunteers, members of their family or individuals residing in their household. The reduction of tuition, dues or any fees or payments due as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.
- O. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity as a player and shall not be compensated with charitable gaming supplies or with rentals of electronic bingo devices.
- P. No organization shall award any prize money or any merchandise valued in excess of the following amounts:
 1. No bingo door prize shall exceed \$25.
 2. No regular bingo or special bingo game prize shall exceed \$100.
 3. No instant bingo prize for a single card shall exceed \$500.
 4. 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.
 5. No pull-tab card shall have a prize exceeding \$500.

The provisions of this subsection 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.
- Q. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall be for sessions separated by an interval of at least one hour during which no sales shall take place.
- R. Separate sessions at the same location shall require separate admission fees.

- S. All bingo and instant bingo sales must occur within the time specified on the charitable gaming permit. In addition, instant bingo sales may occur as provided in subsection T below provided no such sales take place in the required one hour break between sessions.
- T. Instant bingo cards shall only be sold in conjunction with a regular bingo session. No instant bingo sales shall take place more than two hours before or after a session. If multiple sessions are held at the same location, no sales shall be conducted during the required one hour break between sessions. The commission may take action if it believes that a regular bingo session is not legitimate or is being conducted in a manner such that instant bingo cards are not being sold in conjunction with a normal, regular bingo session.
- U. Only bona fide volunteers of qualified organizations may rent, exchange or otherwise provide electronic bingo devices to players.
- V. A qualified organization shall conduct only bingo games listed on a game program for that session. The program shall list all games and prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or disclose that prizes shall be determined at the end of a game.
- W. A qualified organization selling instant bingo or pull-tab cards shall post a flare provided by the manufacturer at the location where such cards are sold.
- X. Only qualified organizations shall advertise a bingo game. Providing players with information about bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, hall or the word "bingo". Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.
- Y. Raffles which award prizes based on a percentage of gross receipts shall use prenumbered tickets.
- Z. The following rules shall apply to pull-tab dispensing devices:
 - 1. A dispenser shall only be used at a location owned or leased by a qualified organization which holds a permit to conduct charitable gaming at that location. Only cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the dispenser.
 - 2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.
 - 3. The game manager or designee shall provide keys to a commission representative for inspection upon request.
 - 4. Only a volunteer game worker of an organization may stock the device, remove cash or pay winners' prizes.

11 VAC 15-22-50. Rules of play.

- A. An organization may adopt "House Rules" regarding conduct of the game, provided such rules are consistent with the provisions of the law and these regulations. "House Rules" shall be conspicuously posted or, at an organization's option, printed on the game program.
- B. All players shall be physically present at the location where the balls for a bingo game are drawn to play the game or to claim a prize. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.
- C. The following rules of play shall govern the sale of instant bingo and pull-tab cards:
 - 1. Cards shall not be sold to the public from the original packing box or container. Cards from the original packing box or container shall be mixed thoroughly before being sold by volunteers, dispensing machines or from other containers.

2. No cards which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.
 3. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.
 4. An organization may commingle unsold cards with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner.
 5. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold on the next date the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained in accordance with 11 VAC 15-22-70.
 6. All seal card games purchased shall contain the sign-up sheet, seals and the cards packaged together in each deal.
 7. Progressive seal card prizes not claimed within 30 days shall be carried forward to the next progressive game in progress and paid to the next progressive game prize winner.
- D. Volunteers may play bingo at any session they have worked provided such individuals do not return to working a game after having played. Volunteers may not purchase directly or through others instant bingo, pull-tab or seal card products from organizations they assist on the day they have volunteered or from any deal they have helped sell, whichever is later.
- E. Electronic Bingo
1. Electronic bingo devices may be used by bingo players in the following manner:
 - a. Players must input into the device each number called.
 - b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic device.
 - c. Players are limited to playing a maximum of 72 (seventy-two) cardfaces per game on each device.
 - d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis.
 - e. Each player using an electronic bingo device shall possess a printed representation of all faces played or to be played by the device or a receipt with the organization name, date, time, number of cards played and device identification number. Images of cards or faces stored in an electronic device must be exact duplicates of the printed faces if faces are printed.
 - f. Commission's representative(s) may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing.
 - g. All electronic bingo devices must be programmed or enabled for play on the premises where the game will be played.
 - h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, his employee, agent or member of his immediate family.
 - i. If a player's call of a bingo is disputed by another player or if a commission representative makes a request, one or more cards stored on an electronic bingo device shall be printed by the organization.
 2. Players may exchange a defective electronic bingo device for another device provided a disinterested player verifies that the device is not functioning. A disinterested player shall also verify that no numbers called for the game in progress have been keyed into the replacement device prior to the exchange.

- F. The following rules of play shall govern the conduct of raffles:
1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.
 2. All prizes shall be valued at fair market value.

Part IV

BANK ACCOUNTS, RECORDKEEPING, FINANCIAL REPORTING, AUDITS, FEES

11 VAC 15-22-60. Bank accounts.

- A. Qualified organizations shall maintain a separate bank account for charitable gaming receipts.
- B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming account or by check from a general fund account of the organization if charitable gaming funds are transferred to such an account.
- C. Monthly bank statements and reconciliations shall be maintained for three years following the close of a fiscal year (September 30th).
- D. All receipts from each session of bingo games and instant bingo shall be deposited by the second business day following the session at which they were received.
- E. Pull-tab and raffle proceeds shall be deposited at least once every calendar week.

11 VAC 15-22-70. Recordkeeping.

- A. In addition to the records required by § 18.2-340.30 (D) of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records that documents and identifies:
 1. Charitable gaming supplies purchased;
 2. Charitable gaming supplies used;
 3. Discounts provided;
 4. Daily bingo reconciliation and instant bingo reconciliation;
 5. Number of electronic bingo devices rented, unique serial numbers of such devices, number of faces sold by each unit and a summary report for each session to include date, time, location and detailed information on income and expenses;
 6. Unused charitable gaming supplies that were destroyed. Destruction must be witnessed by two officers of the organization who shall sign and date the itemized list if the retail face value of supplies destroyed exceeds \$1,000 in a fiscal year;
 7. All operating expenses including rent, advertising and security. Copies of invoices for all such expenses shall be maintained;
 8. Expected and actual receipts from games played on hard cards and number of games played on hard cards; and

9. Each winner for all seal cards, pull-tabs and instant bingo prizes of \$250 and over.
- B. Qualified organizations conducting raffles shall have a recordkeeping system to account for cash receipts, cash disbursements and raffle tickets purchased or sold and prizes awarded. All records shall be maintained for three years from the close of the fiscal year. The recordkeeping system shall include:
1. Invoices for the purchase of pull-tab raffle cards which shall reflect the following information:
 - a. Name and address of supplier;
 - b. Name of purchaser;
 - c. Date of purchase;
 - d. Invoice price for each deal;
 - e. Form number and name of card;
 - f. Serial numbers;
 - g. Quantity purchased; and
Sales price of cards.
 2. A record of cash receipts from raffle ticket sales (other than pull-tabs) by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold and reconciliation of all raffle sales to receipts;
 3. Serial numbers of door prize tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets which shall state the name, address and telephone number of the organization, the prize or prizes to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket and the charitable gaming permit or exempt authorization number;
 4. Receipts for all raffle prizes valued at \$500 or more on which prize winners must provide printed name, residence address and the amount and description of the prize received; and
 5. Deposit records of the required weekly deposits of pull-tab raffle receipts.
- C. All raffle tickets (except for pull-tab raffles) shall state the name and address of the organization, the prize or prizes to be awarded, the date of the prize drawing, the selling price of the ticket and the charitable gaming permit or exemption number. All such tickets shall be sequentially numbered. Winning tickets for prizes of \$500 and over and unsold tickets shall be maintained for three years from the close of the fiscal year.
- D. Organizations shall maintain a complete set of records for each deal of pull-tab cards sold and a reconciliation of cash to determine gross receipts and prizes paid. The reconciliation must be performed at the close of each deal unless all pull-tabs are sold for the same price. In this event, a reconciliation shall be performed at least once every week.
- E. Each organization shall prepare and maintain the following records for each session:
1. A session reconciliation form and an instant bingo reconciliation form completed and signed within 48 hours of the end of the session by the bingo manager;
 2. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register or any similar system;
 3. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game; and
 4. A record of all discounts exceeding two dollars per person given to customers may be required from organizations whose discounts for the previous fiscal year exceeded 1% of that fiscal year's gross receipts.
- F. Organizations may value winner-take-all sheets sold in game packs at a different price from the sale price of such sheets on the floor provided players are notified as to the value attached to sheets in the packs via the house rules.

11 VAC 15-22-80. Financial reporting, penalties, inspections and audits.

- A. Each charitable gaming permit holder shall file an annual report of receipts and disbursements by December 15 of each year on a form prescribed by the commission. The annual report shall cover the activity for the fiscal year. Volunteer fire departments and rescue squads shall file a commission-prescribed resolution of their board of directors by December 15 each year, in lieu of the financial report.
- B. The annual report shall be accompanied by the audit and administration fee as established by the commission for the fiscal year unless the fee has been remitted with quarterly reports.
- C. An organization desiring an extension to file annual reports for good cause shall pay the projected audit and administration fee by December 15 and request the extension in writing.
- D. Qualified organizations realizing gross receipts in excess of \$50,000 in any calendar quarter shall file, in addition to its annual report, a quarterly report of receipts and disbursements on a form prescribed by the commission as follows:

<u>Quarter Ending</u>	<u>Date Due</u>
December 31	March 1
March 31	June 1
June 30	September 1
September 30	December 1

Quarterly reports shall be accompanied by the appropriate audit and administration fee. An annual financial report may not substitute for a quarterly report.

- E. Organizations failing to file required reports, request an extension or make fee payments when due shall be charged a penalty of \$25 per day from the due date up to a maximum of \$750.
- F. Any other qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations) as of September 30 of any year, regardless of when such funds may have been received or whether it has a valid permit from the commission shall file an annual financial report on or before December 15 of each year until such funds are depleted. If an organization ceases the conduct of charitable gaming, it shall provide the commission with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.
- G. If an organization has been identified through inspection, audit or other means as having deficiencies in complying with statutory or regulatory requirements or having ineffective internal controls, the commission may impose restrictions or additional record keeping and financial reporting requirements.
- H. The commission, at its option, may impose a penalty on any organization which fails to comply with provisions of the law or these regulations.
- I. Any records deemed necessary to complete an inspection, audit or investigation may be removed by the commission, its employees or agents from the premises of an organization or any location where charitable gaming is conducted. The commission shall provide a written receipt of such records at the time of removal.

11 VAC 15-22-90. Use of proceeds.

- A. All payments by an organization intended as use of proceeds must be made by check written from the organization's charitable gaming account or the organization's general fund account; and

- B. Use of proceeds payments may be made for scholarship funds or the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes. In addition, an organization may obtain commission approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers to such an account or an irrevocable trust fund may be included as a use of proceeds if the commission-approved payment is authorized by an organization's board of directors.

No payments made to such a special fund account shall be withdrawn for other than the specified purpose unless prior notification is made to the commission.

- C. Expenditures of charitable gaming funds for social or recreational activities or for events, activities or programs which are open primarily to an organization's members and their families shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.
- D. Payments made to or on behalf of indigent or sick or deceased members or their immediate families shall be allowed as use of proceeds up to 1.0% of an organization's prior year gross receipts provided they are approved by the board of directors and the need is documented. Organizations may obtain prior commission approval to exceed the 1.0% limit in special cases.
- E. Payments made directly for the benefit of an individual member, member of his family or person residing in his household shall not be allowed as a use of proceeds unless authorized by law or elsewhere in this chapter.
- F. Use of proceeds payments by an organization shall not be made for any activity which is not permitted by federal, state or local laws or for any activity which attempts to influence or finance directly or indirectly political parties or committees or the election or re-election of any person who is or has been a candidate for public office.
- G. Organizations shall provide details of use of proceeds with the annual financial report.
- H. The commission or its employees may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11 VAC 15-22-20 (D).

If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the commission to meet minimum use of proceeds requirements.

Part V

RENT

11 VAC 15-22-100. Requirements regarding renting premises, agreements and landlord participation.

- A. No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.
- B. Organizations shall not make payments to a landlord except by check drawn on the organization's general fund or charitable gaming account.
- C. No landlord, his agent or employee, member of his immediate family or person residing in his household shall make directly or indirectly a loan to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of an organization in Virginia which leases its charitable gaming facility from the landlord.
- D. No landlord, his agent or employee, a member of his immediate family or person residing in his household shall make any direct or indirect payment to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

- E. No landlord, his agent or employee, person residing in the same household or member of his immediate family shall, at charitable games conducted on the landlord's premises:
 - 1. Participate in the management, operation or conduct of any charitable games;
 - 2. Sell, lease or otherwise provide any bingo supplies including, but not limited to, bingo cards, pull-tab cards, markers or other game pieces; or
 - 3. Require as a condition of the lease or contract that a particular manufacturer, distributor or supplier of bingo supplies be used by the organization.

"Bingo supplies" as used in these regulations shall not include glue and tape sold from concession stands or from a location physically separated from the location where bingo supplies are normally sold.
- F. 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.
- G. No member of an organization involved in the management, operation or conduct of charitable gaming shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility where an organization is conducting its charitable gaming.

Part VI

FACT FINDING CONFERENCES AND HEARINGS

11 VAC 15-22-110. Procedural rules for the conduct of fact finding conferences and hearings.

- A. Fact finding conference; notification, appearance, conduct.
 - 1. Unless automatic revocation or immediate suspension is required by law, no authorization or permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact finding conference, as set forth in § 9-6.14:11 of the Administrative Process Act.
 - 2. If a basis exists for a refusal to renew a suspension or a revocation of a permit or authorization, the commission shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the commission.
 - 3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the commission which may have a bearing on the proposed action at a fact finding conference. If there is no withdrawal, a fact finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the Commission at least 14 days before the scheduled conference.
 - 4. If, after consideration of evidence presented during an informal fact finding conference, a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.
- B. Hearing; notification, appearance, conduct.
 - 1. If, after a fact finding conference, a sufficient basis still exists to deny, suspend or revoke a permit or authorization, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the commission within 14 days of receipt of a report on the conference. Parties may enter into a

consent agreement to settle the issues at any time prior to (or subsequent to) an informal fact finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.
3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location.

Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.
2. The commission shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation.

The executive secretary's designee may represent the commission in an informal conference or at a hearing.

Part VII

REPORTING VIOLATIONS

11 VAC 15-22-120. Reporting violations.

- A. Unless otherwise required by law, the identity of any individual who provides information to the commission or its employees regarding alleged violations shall be held in strict confidence.
- B. Any officer, director or game manager of a qualified organization shall immediately report to the commission any information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.
- C. Failure to report the information required by subsection B may result in the denial, suspension or revocation of a charitable gaming permit or authorization.
- D. Any officer, director or game manager of a qualified organization involved in the management, operation or conduct of charitable gaming shall immediately notify the commission upon conviction of a felony or a crime of moral turpitude.
- E. Failure to report information required by subsection D by any officer, director or game manager of a qualified organization or supplier may result in the denial, suspension or revocation of a permit or authorization.
- F. Any officer, director or game manager of a qualified organization involved in charitable gaming shall immediately report to the commission any change the Internal Revenue Service makes in the tax status of the organization, or if it is a chapter of a national organization covered by a group tax-exempt determination, the tax status of the national organization.

- G. All organizations regulated by the commission shall display prominently a poster advising the public of a phone number where complaints relating to charitable gaming may be made. Such posters shall be provided by the commission to organizations at no charge.

APPENDIX 4 – Rental Summary Per Rent Range

Rental Summary Per Rent Range – 1999 Licensed Charitable Gaming Organizations

Rent Range	Number of Organizations Renting in Range	Organizations Per Region in Rent Range	Number of Organizations That Did Not Meet Use of Proceeds
\$200,000 - \$240,000 ²	4	3 – Region 2 1 – Region 4	2 – Region 2
\$150,000 – \$199,999	8	6 – Region 2 2 – Region 4	4 – Region 2
\$100,000 - \$149,999	20	18 – Region 2 1 – Region 3 1 – Region 4	7 – Region 2
\$50,000 - \$99,999	34	2 – Region 1 24 – Region 2 2 – Region 3 6 – Region 4	13 – Region 2 1 – Region 4
\$25,000 – \$49,999 ³	24	6 – Region 1 11 – Region 2 7 – Region 4	1 – Region 1 5 – Region 2 3 – Region 4
\$1.00 - \$24,999	70	21 – Region 1 10 – Region 2 18 - Region 3 21 – Region 4	2 – Region 1 1 – Region 2 2 – Region 3 7 – Region 4

Region Designation: Region 1 – Central Virginia
 Region 2 – Tidewater
 Region 3 – Northern Virginia
 Region 4 – Southwest Virginia

² Highest rent paid by a single licensed charitable organization in 1999 was \$238,020.

³ Rent ranges from a high of \$50,000 to a low of \$1.00. There are a total of 94 organizations that fall within this rent range. To better represent the rental range, the balance of licensed charitable organizations have been broken down in \$25,000 increments.

APPENDIX 5 – Total Rent Per Region

Total Rent Per Region – 1999 Licensed Charitable Gaming Organizations

Designated Region	Total Rent Paid Per Region	Total Number of Organizations in Region	Average Rent Per Region
Region 1	\$594,402.00	29	\$20,496.62
Region 2	\$6,053,971.50	72	\$84,082.94
Region 3	\$366,242.67	21	\$17,440.13
Region 4	\$1,520,387.81	38	\$40,010.21
Overall Totals	\$8,535,003.98	160	\$53,343.78

**APPENDIX 6 – EXCERPTS FROM HENRICO COUNTY GRAND JURY
INVESTIGATION REGARDING RENTAL OF BINGO FACILITIES –
SEPTEMBER, 1992**

**Excerpt from the Special
Grand Jury's Final Report on
Bingo Operations in Henrico
County
Impaneled September 30,
1992**

**SECTION 10 - FINAL REPORT
FAIR MARKET VALUE RENTAL ISSUES AND
THE BINGO HALL**

The statute regulating Bingo operations clearly indicates that the General Assembly was concerned that Bingo in the Commonwealth be limited to its legitimate charitable purposes. The law prescribes certain prohibited practices which are primarily designed to prevent Bingo from being operated as a business for profit. Key among those prohibitions is the following:

§18.2-340.9. Prohibited practices.--In addition to those other practices prohibited by this article, the following acts or practices shall also be prohibited under the provisions of this article:

.....

C. No person, firm, association, organization, partnership, or corporation shall pay or receive for use of any premises devoted, in whole or in part, to the conduct of Bingo games or Raffles any consideration in excess of the current fair market rental value of such property. For purposes of this article, no fair market rental value consideration shall be based upon or determined by reference to a percentage of the proceeds derived from the operation of Bingo games or Raffles nor shall such consideration be based upon or determined by any reference to the number of people in attendance at such Bingo games or Raffles. Each day in violation of this subsection shall constitute a separate Class 1 misdemeanor as set forth in §18.2-340.10.

Evidence presented before this Grand Jury shows that rents have been charged at several locations in Henrico County which appear at first sight to be quite excessive. For example, the Mountain Road Expo Center charged an average rental of \$1,025.00 per Bingo game at each of its two Bingo halls prior to 1993. Each Bingo session runs for approximately four hours. This rent was raised to \$1,125.00 on January 1, 1993. Four Bingo permittees sponsored eight games per week for years prior to October, 1992, resulting in a weekly rental from Bingo alone of \$8,200.00, and an annual rent of \$426,400.00. Given that the current assessed value of the property is \$490,700.00, the question arises whether the rental charged was in excess of a fair market rental for the property.

Reference is also made to exhibit # 23 which is a memorandum prepared in the Fall of 1992, prior to the Rountrey Study. It involves a explanation of the real estate property assessment concerning the Mountain Road Exposition Hall. In it, it states,

"it is the Bingo operation or business that generates the rent, not necessarily the real estate... It is felt that the higher rents received reflect more the operation of the business." Rents per square foot, although not entirely subject of the assessment review, were noted as being substantially lower than what the Rountrey Report determined.

The Pennsylvania Crime Commission Report issued in April, 1992, entitled Racketeering and Organized Crime in the Bingo Industry, p. 16, recognized that the practice of charging excessive rents was used by commercial Bingo operators to obtain for themselves the great bulk of the profits from Bingo operations from charitable associations giving the landlord corporations a direct pecuniary interest in the Bingo profits in violation of the Pennsylvania Bingo law. Our investigation reveals that the same practice is prevalent in Henrico County.

The Bingo Task Force appointed by the County Manager in September, 1992, examined the issue of excessive rents charged by commercial Bingo operators in Henrico County. The Task Force commissioned a report by Rountrey and Associates, Inc., a professional real estate appraisal firm, to determine the appropriate rent per game based on analysis of the fair market rental of four Bingo halls: Crossroads Bingo, Mountain Road Expo Center, Showplace Annex, and Charitable Entertainment Center (at 5300 West Marshall Street). The Grand Jury has examined this report, which was prepared by Robert E. Coles, MAI, CRE, and Nancy J. Buchanan, MAI, SRA.

The Grand Jury has also commissioned a review of the Rountrey and Associates report by Linwood M. Aron, MAI, SREA. Mr. Aron's analysis, based on thirty-nine years' experience as a real estate appraiser and his exhaustive consideration of the difficulties in determining the fair market rental value of the types of property used for Bingo in Henrico County, was extremely helpful to the Grand Jury in considering this issue. Mr. Aron's testimony raises serious questions concerning the interpretation and effectiveness of the statutory regulation of Bingo hall rents and the adequacy of the statutory language which attempts to control excessive rents charged by Bingo operators.

Essentially, the Virginia Bingo statute contemplates that a charity which does not own its own facility would have to rent a facility in which to conduct its licensed Bingo games. The statute prohibits any person from charging a rent in excess of the fair market rental value of the premises concerned. This prohibition is intended to prevent commercial Bingo operators from making excessive profits from legalized gambling at the expense of Virginia charities.

The Rountrey and Associates report methodology, however, estimated the fair market value of Henrico County Bingo halls based

on rental of the Bingo operation as a going concern--including factors such as the expense of promotion of the Bingo games through advertising and a factor of 20% to 25% for management, leasing and entrepreneurial profit. Having justified a rent of \$533.00 per game (\$15.30 per square foot) for each of the two Bingo halls at the Mountain Road Expo Center, Rountrey and Associates conducted the following analysis:

We are fully aware that the state law says "no fair market rental value consideration shall be based upon or determined by reference to a percentage of the proceeds derived from the operation of Bingo games or Raffles nor shall such consideration be based upon or determined by any reference to the number of people in attendance at such Bingo games or Raffles." However, in the real world, a charitable organization will pay more to play at a facility in which the gross receipts are higher. If they can earn more for their charity in one location versus another location they are willing to pay more for this. (Emphasis added.)

Rountrey and Associates then offered the opinion that the fair market rental value per game for the Mountain Road Expo Center is \$955.00. Rountrey and Associates used a similar methodology and analysis, with similar results, on the other three Bingo hall locations it considered. The discussion quoted makes it clear that in reaching its determination, Rountrey and Associates disregarded the language of the state Bingo law set out above. In his letter of February 5, 1993, transmitting an executive summary of the Rountrey and Associates report to the Board of Supervisors, County Manager Hazelett advised the Board of the rents found to be "fair" by Rountrey and Associates. He then wrote, "While these figures may, at first blush, appear high, the Rountrey report indicates that they represent fair market rent of those facilities for Bingo games." (Emphasis added.) The County Finance Department was instructed to have Bingo permittees and landlords comply with the findings of the Rountrey and Associates report.

The Grand Jury has also heard from several witnesses concerning the relationships between the charities licensed by Henrico County to conduct Bingo games and the entities which have built, equipped and operated Bingo halls. This testimony clearly indicates that the Bingo hall operators at two of the locations, where six (about 25%) of all Henrico County Bingo permittees sponsored games, are in control of the Bingo games--namely the Mountain Road Expo Center and Crossroads Bingo (prior to August 30, 1993).

Some charities have operated entirely on verbal agreements with Bingo hall operators. Others have entered into lease agreements which are revocable at a moment's notice (tenancy at will). One organization's agreement was summarily terminated by

the Bingo hall owner when he discovered that the head of the organization had visited a competing Bingo hall. In one case, an employee of the Bingo hall operator served as chairman of the charity's Bingo committee. In another case, the charity established a Bingo checking account, requiring dual signatures of a charity official and an employee of the Bingo hall operator. The charity official testified that the practice was to leave a dozen signed blank checks with the Bingo hall employee, and that the bank statements on the Bingo account went directly to the Bingo hall employee without review by the charity. The charity official stated that she did not even know the account number of the charity's Bingo account or its current balance. She also did not know the amount of rent paid by the charity per event.

The Grand Jury in the course of its extensive investigation of all aspects of Bingo operations in Henrico County has yet to hear evidence of any negotiations between charities licensed to conduct Bingo games and Bingo hall owners concerning the rent charged the charity. In one case, the rent charged the charity was raised twice without the knowledge of the charity. One charity was charged no rent for six to nine months when it first began to conduct Bingo games at one owner's facility, and was advised that it would pay no rent until the game began to make money. The Grand Jury heard evidence that accountants and even attorneys were employed for charities by the Bingo hall owner, without prior consultation with the charities. One charity was told that the accountant involved set the rent for the charity based on the success of each game, and that organizations with a more favorable time slot were charged higher rents. Examination of the records of the licensed organizations has confirmed the existence of a practice of charging different licensed organizations higher rents for more favorable times--times when the expected attendance at the Bingo games would be the highest.

As indicated above, our investigation revealed many instances in which an employee of the Bingo hall owner or the Bingo hall owner himself became a member of the charitable organization and managed the charity's entire Bingo operation. In some cases, the Bingo hall operator would arrange for "volunteers" to work the Bingo games. These "volunteers" would become members of the charitable organization, but would not participate in any of the activities of the charity except Bingo. In one case, the membership dues of the "volunteers" were paid to the charity by an employee of the Bingo hall owner, all at once, and in cash. In another case, a membership list including regular Bingo hall workers was submitted to Henrico County licensing authorities on behalf of a charitable foundation which was not a membership organization and did not have authorized membership separate from its trustees.

In summary, evidence before the Grand Jury makes it clear that in most if not all cases where "rent" was to be paid to a Bingo

hall owner the organizations licensed to conduct Bingo games in Henrico County did not seek in an arms-length transaction to obtain rental real property in which to conduct their games. Instead, they offered the use of their Bingo permit to a full-service Bingo hall operation in exchange for a share of the proceeds of the Bingo games.

THE CURRENT REGULATORY SCHEME IS INADEQUATE

The Grand Jury has concluded that the current scheme for regulating the rents paid by Bingo licensees to Bingo hall owners is inadequate to prevent the abuses found in Pennsylvania and in Henrico County. First, the current scheme does not recognize what is happening in "the real world," to borrow a phrase from the Rountrey and Associates report. Second, the concept of "fair market rental value" is not an adequate basis for regulation of Bingo halls.

The current scheme of regulation, as embodied in §18.2-340.9.C., Code of Virginia, contemplates that many organizations which would be eligible for licenses to conduct Bingo games would own their own premises and devote those premises for one or two nights a week to conducting Bingo games. However, it also contemplates that many organizations eligible for licenses to conduct Bingo games would not own their own premises, and those organizations should not be discriminated against in the licensing process. Those organizations which do not own their own premises would be expected to obtain by rental contract a suitable location, identify that location in their license application, and be licensed for one calendar year to conduct Bingo games at that location and no other. §18.2-340.3.2., Code of Virginia. Licensed organizations are prohibited from contracting with any person, firm, association, organization, partnership, or corporation of any classification whatsoever for the purpose of organizing, managing, or conducting Bingo games. §18.2-340.9.B., Code of Virginia.

Our investigation has revealed that many licensed organizations have little or no desire to obtain the kind of interest in real estate which generally characterizes a rent of premises. Instead, they seek a "turn-key" operation, including all equipment, security, cash control, accounting, training, and other operational support necessary to conduct the Bingo game. They also seek an established Bingo location--a place where regular recreational Bingo players are accustomed to go to indulge in legalized gambling. The Grand Jury is not aware of any licensed organization in Henrico County which conducts its Bingo games in rented space not specifically equipped as a Bingo hall.

It is clear that "fair market rental value" is an inadequate concept to use in regulating the fees a Bingo hall operator may charge for the use of his premises. First, it does not adequately define the type of rental agreement or contract which is being

evaluated. Commercial leases of real property may be expressed as gross rent, in which the lessor provides everything necessary to the use of the property to the lessee, including, for example, all utilities, external and internal maintenance and repairs, taxes, janitorial and landscaping services, etc., in exchange for one gross rental payment of a fixed sum. In a typical commercial lease, the lessor will provide external maintenance, taxes, and insurance, while the lessee is responsible for utilities, internal maintenance, and janitorial services. In a net rent agreement, the tenant pays a fixed sum for the premises, and is then responsible for all expenses associated with his occupancy of the premises. The Virginia Bingo statute provides no guidance as to the type of rental agreement a licensed charity may enter into for the use of real property to conduct a Bingo game.

In 1978, the Virginia Attorney General addressed the question of what the term "fair market rental value" means in the context of Bingo regulation. The Attorney General opined:

One must consider the uses that can be made of the premises. The rental value of other commercial establishments of similar size and use in the area are factors to be considered as well as rents paid by other lessees for similar uses of premises. The highest and best use for the premises is a factor to consider. In the final analysis, the fair market rental value depends to a great extent on what a willing purchaser is willing to pay and for what amount a willing seller is willing to sell. It is my opinion, therefore, that fair market rental value is determined by evaluation of all premises in the area judged by the above criterion, and is not to be determined by a comparison of those premises used exclusively for Bingo.

1978-79 Report of the Attorney General, at 23.

This definition of fair market rental value is of very little help to a regulator seeking to determine the appropriate charge a Bingo hall operator should make for the use of his premises. The Attorney General indicates that fair market rental value should be determined in accordance with traditional methods of valuation used in the field of real estate appraisal. But, as the Rountrey and Associates report demonstrates, it is not possible to evaluate a Bingo hall "rent" using traditional methods of real estate valuation. The licensed organizations are not purchasing, and the Bingo hall operators are not selling, an interest in real property. Instead, the licensed organizations are in effect paying for the privilege of participating in the profits of an ongoing Bingo hall enterprise.

Commercial leases are customarily expressed in terms of annualized rental per square foot. These annualized rentals are

based on long-term leases, usually for at least one year and frequently for longer terms. Numerous imponderable factors must be accounted for when using such annualized rental figures to compare with the at-will rental of premises on a once or twice a week basis, where the lessor maintains almost complete control over the use of the premises, as is the case in Bingo hall rental in Henrico County. There simply are no "similar uses of premises" to which a reasonable appraiser can refer when evaluating Bingo hall "rents."

Appraisal of real property necessarily depends on the existence of a market for real property. Traditional appraisal methodology assumes the existence of a market in which willing buyers and willing sellers meet and reach arms-length transactions based upon full information as to market conditions and free from abnormal pressures to conclude a transaction. We have found nothing resembling such a market in the field of Bingo hall operations in Henrico County. When, based on the results of the Rountrey and Associates report, Henrico County licensing officials required some Bingo hall owners to lower their rents significantly, one Bingo hall owner sought from the licensed organizations written statements indicating that they did not object to the higher rents. Astonishingly, one licensed charitable organization actually agreed to this request and provided the Bingo hall owner such a written statement. See exhibit # 18. When a tenant is found objecting to a reduction of its rent, it seems reasonable to conclude that traditional market forces are not at work in this sphere.

Faced with these difficulties, Rountrey and Associates fell back on valuing the various Bingo hall fees in terms of their value as a going concern--a method appropriate to valuation of a business entity, but not traditionally used in valuing real property. Rountrey and Associates readily acknowledge in their report that this method finds no basis in the Virginia Bingo law or in the Attorney General's opinion interpreting the law, but justifies its use on conditions existing in "the real world." The Rountrey and Associates report reflects and illustrates the flaws inherent in the current scheme of regulation. It does not provide an adequate basis for regulation of Bingo hall "rents" in Henrico County presently or in the future. The report failed to evaluate Fair Market Value of the real estate. It did fulfill the purpose for which the report was intended. It evaluated ongoing Bingo businesses.

THE BINGO LAW SHOULD DEAL WITH THE REAL WORLD

If the Virginia Bingo law is to provide regulators with a meaningful tool to prevent Bingo hall operators from charging excessive fees and reaping enormous profits from legalized gambling at the expense of charitable organizations, it will have to deal with conditions as they exist in the real world. The Grand Jury does not doubt that organizations which do not own their own

premises should nonetheless be entitled to obtain Bingo permits on the same basis as organizations which own their own premises. But some meaningful mechanism for review and control of the fees paid by those charities for the use of premises to conduct Bingo games must be devised.

These conditions may be briefly characterized as follows. Leaders of charitable organizations are often inexperienced in financial matters, naive, trusting, idealistic and focused on the goal of obtaining money by any legal means for the altruistic cause their organization espouses. Owners and operators of Bingo halls, by contrast, are typically experienced, professional, astute business people, who have made a significant investment in their Bingo hall operations and seek to maximize the return on that investment. Bingo hall owners insist upon complete control of their Bingo hall operation and are not interested in oversight by their tenant charitable organizations. This attitude is generally not in conflict with the position of the charitable organization, which often feels it can rely entirely on the oversight provided by the County government.

When a charitable organization begins to receive significant revenue from Bingo operations, it may quickly become dependent on that source of income, and reduce or eliminate other fund raising activities which generate less income and require greater effort. At that point, the Bingo hall owner, by his power to terminate the charity's operations at his premises at will, is in a position to demand any concession from his tenant charity on pain of cutting off the tenant's financial lifeline. Under these conditions, it is scarcely surprising to find that licensed organizations do not aggressively assert their rights to control Bingo operations, but instead acquiesce readily to any demands by Bingo hall owners. Soon, even without a management contract which is prohibited under the current law, the Bingo hall owner effectively organizes, manages and conducts the Bingo games.

Examples of the many subterfuges used to disguise this control are outlined above. It is sufficient to say that the current regulatory scheme embodied by the Virginia Bingo law is entirely too easy to evade by use of these subterfuges. The law should be changed to deal with conditions found in the real world.

RECOMMENDATIONS OF THE SPECIAL GRAND JURY

A wide range of options is available for reform of the Virginia Bingo law to address the problem of excessive Bingo hall fees. The Grand Jury recommends that any reform measure meet the following criteria:

1. It should provide for regulation and licensing of Bingo hall operators similar to the regulation and licensing of licensed charitable organizations.

2. It should provide a standard, approved Bingo hall rental contract for the duration of the license period, and revocable by either party only for cause.

3. It should strengthen the current requirements for licensee control over Bingo operations by providing the licensed charitable organization with exclusive control over the rented space and the operation of its Bingo games in that space, in terms of games to be played, prizes to be awarded, supplies to be purchased, and cash control measures to be used.

4. It should prohibit employees or agents of the Bingo hall owner from having any role in the conduct of Bingo games at the facility, including especially any role in the handling or control of cash before, during and after the games.

5. It should provide for regulatory approval of Bingo hall "rental" fees charged. Fees should be set based on the services provided in the standard contract, and payments of any kind separate from the approved fee should be prohibited. Fees should be set at a level sufficient to afford the Bingo hall operator a reasonable return on his investment.

6. It should provide tough criminal and civil penalties for any person or organization who violates the law or the regulations or who uses or attempts to use any device or subterfuge to evade the law or the regulations. Current law provides that violations in this area are treated as misdemeanors. Gross and willful violations of the law in this area should be treated as felonies and made punishable accordingly.

These regulations recognize the unequal bargaining position between the Bingo hall operator and the licensed charitable organization, and seek to provide protection for the charitable organization while permitting the continued operation of rented facilities to accommodate licensed Bingo games. Administrative procedures designed to protect owners of rental Bingo facilities from arbitrary fee setting should be incorporated in the regulations. It may be that some Bingo hall operators will be unwilling to subject themselves to the kind of scrutiny implied in these recommendations. Any such operators have no place in the business of legalized gambling for charity.

These regulations also recognize the immense opportunities for abuse present in Bingo hall operations, where huge sums of cash change hands routinely on a daily basis. A Bingo permittee is granted a license to operate Bingo games. A license is a privilege which traditionally is subject to administrative review and

oversight. The Grand Jury's conclusion is that the Bingo industry should be regarded as a regulated industry which operates for the public convenience to support eligible nonprofit organizations, and not for the purpose of allowing Bingo hall operators to rake off all that the market will bear, and then some, into their private coffers.

This conclusion comports with that of other authorities which have considered the Bingo hall rental issue. The Pennsylvania Crime Commission recommended creation of a new commission dealing with Bingo and small games of chance, and that the regulatory agency have rule-making authority to set limits on the amount of rent that could be charged to charities for the use of halls or other facilities for Bingo games. Pennsylvania Crime Commission, Racketeering and Organized Crime in the Bingo Industry, p. 60. In February, 1993, the City of Richmond entered into a settlement agreement with a non-profit Bingo hall owner in the City of Richmond, providing an annual ceiling on rent which may be charged by the owner in rent to organizations conducting Bingo games or Raffles at the owner's Bingo hall. The ceiling on rent specifically included janitorial services, rent of Bingo equipment, tables and chairs, utilities, and incidental expenses, and the agreement specified that no separate charges would be recovered by the Bingo hall owner.

Implementation of these reforms will give regulators and the Commonwealth's Attorney the legal tools needed to crack down on Bingo hall rent abuses. Because of the inadequacy of the Virginia Bingo law and its concept of "fair market rental value," successful prosecution of Henrico County Bingo hall operators for charging rents in excess of the "fair market rental value" is highly improbable. Criminal prosecutions must be based on hard evidence of willful violation of the criminal law, and not on differences of opinion regarding vague and illusory standards.

These recommendations are no panacea for all problems associated with legalized gambling for charity. Particularly, they will have no effect unless coupled with diligent scrutiny on the part of public officials and regulators. They will, however, give the regulators the tools needed to end the practice of Bingo hall operators reaping excess profits at the expense of licensed charitable organizations.

**APPENDIX 7 – EXCERPTS FROM “AN EVALUATION OF THE
MISSISSIPPI GAMING COMMISSION’S BINGO DIVISION” –
NOVEMBER 13, 1997**

*Excerpts from “An Evaluation of the
Mississippi Gaming Commission’s Bingo
Division”*

November 13, 1997
The PEER Committee
Mississippi Legislature

**An Evaluation of the Mississippi Gaming Commission's
Bingo Division**

November 13, 1997

**The PEER Committee
Mississippi Legislature**

An Evaluation of the Mississippi Gaming Commission's Bingo Division

Executive Summary

November 13, 1997

Introduction

PEER reviewed regulation of charitable bingo in Mississippi to determine the societal risks associated with this form of legalized gambling, whether state law and Gaming Commission regulations adequately address these risks, and whether the commission effectively implements its legal mandate.

The principal risks associated with legalized bingo are that licensees might not meet their charitable obligations which they accept as a precondition to licensing, that games might not be conducted fairly, and that the competitive playing field for all charities might not be kept level so that all have opportunity to use charitable bingo as a means of raising funds.

Overview

State law does not adequately address the charity fraud risk in that it does not:

- authorize the commission to restrict bingo licensure to bona fide charities with a record of charitable operations;
- authorize the commission to track the flow of funds to determine that charitable causes are being supported;
- determine clearly the duties to charity of veterans' organizations; and,
- provide the commission with authority to devise standards to protect against abuses in the appraisal process.

Additionally, Gaming Commission rules dealing with controls on the number of sessions a licensee may operate have not been in compliance with state law.

The weaknesses in law have allowed organizations which have not carried out significant charitable activities to become licensed to conduct chari-

table bingo. Further, these weaknesses have left the Gaming Commission without legal authority to require licensees to submit plans for the support of charitable activities and to audit for material compliance with these plans.

The commission's lack of authority over the methods used by appraisers in commercial leasing leaves the commission without a way of insuring that the methods used in appraising property give a landowner only a fair price and not an excessive price on the property.

With respect to operations of the Gaming Commission's Bingo Division, the division lacks the trained accounting personnel necessary to perform financial analysis tasks associated with gaming regulation, lacks proper financial documentation to carry out financial regulation of licensees, and does not comply with its own procedures relative to agents' reporting to management regarding work plans and achievements. Also, the commission's hearings procedures contain technical deficiencies relative to burden of proof and licensees making legal arguments before the entire commission when appealing decisions of the agency hearing's officer.

These conditions result in inconsistencies in the enforcement of agency rules. More importantly, the lack of trained accounting personnel to regulate the activities of bingo licensees leaves the agency without the staff needed to review financial reports of bingo licensees to insure that persons involved in the business are not owners of interests in other businesses such as lessors or suppliers.

Recommendations

The Legislature should amend the Charitable Bingo Law (MISS. CODE ANN. Section 97-33-50 et seq.) to provide the Gaming Commission with authority to restrict licenses to entities with a record of providing charitable services. The law should be amended to require that licensees submit plans of support for charitable activity which the commission can audit to insure that bingo charities are

making material progress toward meeting their expressed purposes of supporting charities.

The Legislature should also amend the law to allow the commission to set standards for appraisals to be submitted for commercial leases. PEER also recommends that the Legislature change the bingo licensure cycle from one year to two, with staggered expiration dates to reduce the annual workload for agents involved in the review of license applications.

The Gaming Commission should adhere to its policy which requires agents' written plans of work

and reports on accomplishments. The agency should review its current positions filled and vacant to determine if it has resources to carry out the financial accounting analysis needed by the Bingo Division. In the event that the commission cannot carry out this function with existing resources, it could request additional resources specifically for this purpose.

PEER also recommends that the commission amend its rules to allow attorneys representing licensees and the state to argue errors of law before the commission. Further, the commission should amend its rules to shift the burden of proof to the state in matters involving penalties.

For More Information or Clarification, Contact:

PEER Committee
P. O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
<http://www.peer.state.ms.us>

Representative Billy Bowles, Chairman
Houston, MS (601) 456-2573

Senator Ezell Lee, Vice-Chairman
Picayune, MS (601) 798-5270

Senator William Canon, Secretary
Columbus, MS (601) 328-3018

Background

Significance of Bingo as a Charity Fundraising Tool

Mississippi bingo halls take in considerable amounts of money in a fiscal year. Based on FY 1996 data obtained from the Mississippi Gaming Commission, approximately 128 bingo licensees in Mississippi operating charitable bingo games generated over \$135 million in gross revenues. According to unaudited financial information licensees file with the Gaming Commission, these licensees transferred to their charity accounts approximately \$13 million between July 1995 and June 1996. During the same period, these licensees paid out approximately \$104 million in prizes and \$18 million in operating expenses.

Because of the volume of funds collected in the name of charitable causes, the regulation of bingo is a significant matter. While some charities are undoubtedly assisted by the collection of funds from bingo operations, there is some risk that persons conducting games will do so for their own profit (see **Bingo and Social Risks**, pages 6 through 8.) Consequently, the state needs a strong and vigilant regulatory body capable of insuring that bingo is conducted fairly and for the legally intended purpose of charitable support.

Summary of the Charitable Bingo Law

Mississippi's Charitable Bingo Law, codified as MISS. CODE ANN. Section 97-33-50 et seq., establishes the terms and conditions under which bingo may be legally conducted in Mississippi. These sections establish a procedure for licensing entities eligible to conduct bingo, define legally acceptable expenditures for such entities, and provide for the licensing of suppliers and other persons who provide support to the bingo industry. Such controls are established to enable the state to determine whether legitimate charity licensees consisting of suitable persons are engaged in bingo. These provisions are also intended to control the amounts and recipients of bingo proceeds to entities other than charities.

Licensing of Entities Eligible to Conduct Bingo

Section 97-33-51 provides that in order to be legal, a bingo game in which prizes are given must be conducted in conformity with the Charitable Bingo Law. Section 97-33-53 requires that an entity must be a "charitable organization" to be eligible for a bingo license. Mississippi law defines a "charitable organization" as one which has either obtained or has applied for tax-exempt status under Internal Revenue Code Section 501(c) or (d) and is either a chapter or post of a national veterans' organization or a not-for-profit civic, educational, or wildlife organization, or a religious

organization domiciled in the state (see Section 97-33-53(b)). The term of a license is one year and annual re-application is required.

For an entity to be licensed, the Gaming Commission must be satisfied that the entity meets the previously mentioned charitable criteria and that the members in charge of the bingo games are of good moral character and that the games will be conducted in accordance with state laws and rules of the Gaming Commission. The commission may not issue licenses to persons who have been convicted of gambling-related offenses or other offenses described by the commission in its rules or to those persons who are "professional gamblers," which is not defined by the statute. Firms which have as officers or directors persons who have been convicted of such offenses are also be barred from licensure.

Legal Expenditures

As stated above, Mississippi law provides that entities conducting bingo games do so for charitable purposes. Specifically MISS. CODE ANN. Section 97-33-52 requires that the net proceeds of bingo be expended for the purpose for which the entity is created. Proceeds of bingo may not be used to purchase, improve, or construct buildings solely used for the purpose of conducting bingo games. A bingo licensee may pay only those expenses of bingo operations authorized under law. Expenses which may be paid are those associated with procuring supplies and equipment necessary to conduct games and reasonable expenses associated with obtaining or performing janitorial, bookkeeping, and security services, as well as reasonable market rent for the building used for bingo operations. Salaries may also be paid to bingo supervisors and others so long as the salaries paid do not exceed \$400 per session. Prizes may not exceed \$7,500 per session unless the bingo licensees play but one session per week, under which conditions the limit is \$8,000 per session (see sections 97-33-67 and 97-33-69).

State law does not require that licensees operating bingo halls provide a specific sum to support organizations carrying on charitable activities. A bingo licensee must use the net proceeds of bingo halls to support the purposes for which the organization is created. This may be achieved by either providing assistance to other charitable organizations or providing services directly to persons in need of assistance.

Licensing Lessors, Suppliers, and Others Associated with Bingo

State law requires that manufacturers, distributors, and commercial lessors be licensed. Manufacturers and distributors provide bingo supplies such as bingo paper and electronic machines to bingo licensees. Commercial lessors lease buildings to bingo licensees where games are conducted. In some cases, the lessor is the actual owner of the building.

In other cases, the lessor is a real estate management firm which obtains a lease from the owner and subleases the building to the bingo licensee. This licensure requirement is intended to determine suitability of these persons to do business with bingo halls in Mississippi. The law bars persons convicted of crimes from being involved in any of these businesses and such licensees may not own direct or indirect interests in bingo halls.

Commercial lessors must also comply with additional requirements. Section 97-33-203 requires that lessors submit two real estate appraisals to the Gaming Commission to justify changes in rent. Further, the Gaming Commission must approve lease terms between commercial lessors and bingo licensees. The purpose of these provisions is to protect against excessive rental charges which may reduce the amount of money made available to charity.

Bingo and Social Risks

Charitable bingo in Mississippi is a form of legalized gambling. As in the case of other forms of gambling, the activity poses certain risks to the people of Mississippi. State law and the efforts of regulators should be formulated in order to protect the state's residents from these associated risks.

After reviewing the literature on bingo, including the laws of other states which have chosen to legalize bingo for the exclusive support of charitable activities, PEER determined that the following are the principal risks associated with the legalization of bingo for charitable purposes:

- the charity fraud risk;
- the cheat risk; and,
- the even playing field risk.

These risks are described in detail in the following sections.

The Charity Fraud Risk

Perhaps the most significant risk associated with legalization of bingo for charitable purposes is the charity fraud risk. Bingo licensees may be tempted to operate their halls for purposes other than the support of charity. Their purpose for doing this could be to either skim funds for criminal purposes, launder funds from illegal operations thorough a bingo hall, or to use funds legally obtained for the support of activities which are not charitable in nature.

provided for under the law. An organization must show that proceeds are used for charitable purposes.

State law does not authorize the Gaming Commission to set standards to control the methods used by appraisers conducting appraisals of commercial property used in bingo operations.

Because the purpose of legalized bingo in Mississippi is support of charity, the state has an interest in seeing that the expenditures of bingo halls are controlled so as to maximize the amount of revenue available for charities. Current appraisal practices do not maximize the amount of revenue that can be passed on to charity.

MISS. CODE ANN. Section 97-33-203 addresses the process by which bingo commercial lessors obtain licenses and lease their property to bingo licensees. With respect to the appraisal process, this section provides:

No lease of any premises by a commercial lessor to any charitable organization for a charitable bingo game shall provide for payment in excess of the reasonable market rental rate for such premises as determined by the average of (2) two independent appraisals for the premises. Such appraisals shall be conducted by appraisers selected by the applicant for a commercial lessor's license from a list of state-certified appraisers compiled and maintained by the commission. The appraisals shall be submitted by the commercial lessor as a part of the application for a commercial lessor's license. The commission may require that a third independent appraisal be conducted by a state-certified appraiser, selected by the applicant from the list. . . .

In determining the market value of a lease, some appraisers use a conservative method by selecting properties located near the bingo hall. Such an appraiser uses property in a shopping center where the bingo hall is located to determine the fair market value. In cities with competing bingo halls, some appraisers consider the lease amounts paid by those bingo halls in formulating an appraisal of fair market value.

In some cases, appraisers use only bingo halls as comparable for determining market value whether or not there are other bingo halls in the community wherein the subject property is located. With these appraisers, it does not matter if the bingo hall is located in a particular town in Mississippi, the comparable will come from other cities in Mississippi with bingo halls. PEER also noted that in some cases, bingo commercial lessors procure the services of appraisers who have used information on bingo halls in other states as a basis for arriving at the fair market value of property used for bingo halls in Mississippi. These differences can be attributed to the fact that the lessor, not the charity, is responsible for

selecting and paying the appraiser. A lessor is interested in getting the best return on his investment, but is not necessarily interested in maximizing the benefit transferred to a charitable activity. While it is not uncommon for lessors to seek the best price available to them through the use of appraisers who give favorable appraisals, the regulated industry of charitable bingo is conducted for the benefit of charitable activities. In this case, the state has an interest in seeing that the means and processes used to appraise property are *reasonable and fair to the property owner*, but which also insure that potential returns to charity are diminished only by the amount necessary to pay a lessor a fair price for his property.

Presently, the Gaming Commission could refuse to list an appraiser as approved but the law does not authorize the commission to make provision for acceptable practices appraisers may use in conducting bingo hall appraisals. Under these conditions, it is questionable as to whether the commission could have a rational basis for removing an appraiser from the list of approved appraisers, absent more statutory authority.

PEER determined that appraisers do not use a consistent methodology in conducting appraisals of bingo halls. This is exacerbated by the fact that state law does not allow the commission to select an appraiser of its own choosing to perform an appraisal if it finds appraisals submitted to it by lessors to be excessive in their estimate of value. The net effect of this condition is that bingo licensees often pay much more in rent to their lessors when they acquire their leasehold interest from the owner of the building.

Protection Against the Cheat Risk

Do state law and commission practice protect against the cheat risk?

Current law authorizes the commission to inspect bingo halls and insure that games are conducted fairly. The commission has in place a procedure whereby patrons may complain to the commission regarding alleged unfair aspects of bingo operations. Commission agents may investigate complaints to determine if there is a basis for concluding that games are conducted in violation of state law or commission rules. Commission agents may also recommend to bingo halls that patrons treated unfairly be compensated for winnings not paid. Compliance with this is voluntary.

MISS. CODE ANN. Section 97-33-65 authorizes the Gaming Commission to inspect bingo halls and insure that the games are fairly held. The commission has established a procedure whereby agents of the commission may receive and investigate complaints against bingo licensees. In reviewing a sample of cases, PEER determined that many complaints are made by customers who contend that they actually "bingoed" and that the employees of the bingo hall did not recognize their bingo. If agents conclude that the complaint is true, the agent will

Recommendations

Legislative Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 97-33-53 to require that a charitable organization have IRC 501 (c) or (d) status for three years prior to being eligible for licensure. Also, the Gaming Commission should require the applicant organization to document that it has made significant progress toward meeting its corporate purposes prior to becoming licensed.
2. The Legislature should amend MISS. CODE ANN. Section 97-33-57 to authorize the Gaming Commission to:
 - require that licensees submit plans to the commission detailing *what charitable activity they intend to support for the period of the license*;
 - require that the licensee report to the commission all transfers made in support of charity;
 - audit the transfers of funds from licensees to any other entity which has one or more common officers;
 - revoke the license of any licensee which has failed to comply with the provisions of its business plans or which makes contributions to any organization which fails to provide material support (as defined by the commission) for charitable activities; and,
 - ensure that revenue from charitable bingo operations is used in support of charitable purposes. The commission should have the authority to determine how funds generated from bingo operations and transferred to the charity account are expended. The commission should also have the authority to determine what percentage of the funds from bingo operations may be used to support a charity's management and general expenses and how much must be used to support charitable purposes.
3. The Legislature should amend MISS. CODE ANN. Section 97-33-203 to require the Gaming Commission to:
 - establish lists of approved appraisers to perform commercial lease appraisals;
 - prohibit the practice of using bingo halls as comparables in appraisals unless they are in the same local area as the facility being appraised; and,

- require that a lessor use an appraiser of the commission's own choosing if, in the opinion of the commission, the appraisal submitted by the lessor is invalid or is otherwise suspect. Lessors should be required to pay for the appraisal.
- 3. The Legislature should amend MISS. CODE ANN. Section 97-33-52 to clarify the responsibilities of veterans' organizations with respect to charitable contributions. Changes in law should make clear whether veterans' organizations should be responsible for providing support to charitable activities other than the operations and upkeep of the veterans' organization.
- 4. Because the current annual licensure requirement places a considerable burden on the regulatory capacity of the Gaming Commission, the Legislature should amend MISS. CODE ANN. Section 97-33-57 to provide for two-year bingo licenses which come up for renewal at staggered intervals.

Administrative Recommendations

- 5. The Gaming Commission should study specific duties of the licensure and regulation process and compare them with capabilities of commission staff to determine whether any vacant positions could be committed to the Bingo Division or whether other commission staff could provide assistance to the Bingo Division to conduct financial analysis. In the event that no vacant positions could be reallocated or assigned to the Bingo Division or that no other commission staff could assist the Bingo Division, the commission should study alternatives for providing the Bingo Division with financial analysis support.
- 6. The Gaming Commission should begin obtaining from licensees and applicants all necessary documents for complete financial reviews of persons involved in bingo operations.
- 7. The Gaming Commission should adhere to its policies regarding work plans and work accomplished. It should also continue its practice of meetings between the enforcement agents and management to discuss problems in enforcement. Commission management should take steps to return to the Bingo Division any positions which were transferred out to other divisions of the agency and should provide additional management personnel in the Bingo Division to assist the current Branch Director.
- 8. The Gaming Commission should amend Rule KK to allow for attorneys representing the licensees and the state to argue errors of law in written briefs before the commission. Further, the commission should amend Rule KK to shift the burden of proof to the state in matters involving penalties.

APPENDIX 8 – Rental Summary by State

Rental Summary – Regulation by States of Rental Prices for Charitable Gaming Organizations As of November 29, 2000

State	Summary
Arizona	5-407 (G). Expenses shall not be incurred or paid in connection with holding, operating or conducting any game of bingo pursuant to any license, except bona fide expenses of a <u>reasonable amount</u> . Expenses may be incurred only for the following purposes: 3. Rent
Colorado	12-9-104.5. Landlord licensees - stipulations. (4) Rent charged to a bingo-affle licensee by a landlord licensee for the use of a commercial bingo facility shall cover <u>all expenses and items reasonably necessary</u> for the use of the commercial bingo facility for a bingo occasion including, but not limited to, insurance and maintenance for such facility, adequate and secure storage space, restrooms, janitorial services, and utilities. (8) Every landlord licensee shall file with the licensing authority all leases, agreements, and other documents required in order for a bingo-affle licensee to lease its commercial bingo facility.
Florida	Bingo can only be held on the following premises: (1) property owned by the charitable organization, (b) property owned by charitable organization that will benefit by the proceeds, (c) property leased for a period of not less than 1 year, providing lease does not provide for payment of a percentage of proceeds generated and providing the rental rate does not exceed the rental rates charged for similar premises in the same locale. (Title XLVI, Chapter 849) -- Felony if found to participate in gaming on leased premises. (Section 849.01)
Georgia	Bingo can only be held on premises owned by the nonprofit, tax-exempt organization, on property leased by the same organization and <u>used regularly by that organization for purposes other than the operation of a bingo game</u> , or on property leased by another organization operating the bingo from another organization. (Section 16-12-57 G) -- Must provide copy of lease with application (16-12-53)
Illinois	Lessee (provider) can only receive "reasonable compensation" (Section 230 ILCS 30) -- Can only hold 8 games per year on leased property (leasing from municipality: 16 games per year), must obtain license from state -- Annual fee: \$50 -- Cannot have an interest in any supplier and cannot participate in the management of any game.
Indiana	IC 4-32-9-20 -- Section 20 -- Rent may not: (1) be based on revenue generated from the event, (2) exceed two hundred dollars per day ([a] facility may not be rented for more than three days during a calendar week for an allowable event)
Iowa	Must be licensed (99B.7) Rent cannot be imposed or collected based upon a percentage of receipts. The qualified organization has the right to terminate the rental agreement at any time without penalty and without forfeiture of any sum. Except for purposes of bingo, lessee cannot be a holder of a liquor control license or beer permittee with respect to those premises or with respect to adjacent premises (there is an exception regarding the liquor/beer licenses).
Kansas	Section 79-4706. (c) No lessor, any employee of lessor, officer, shareholder of a for profit corporation shall play any game on the premises leased nor assist in the management of the game, (q) No licensee shall manage, operate or conduct bingo on any leased premises or with leased equipment unless all of the terms and conditions of rental or use, including the rental of chairs, bingo equipment, tables, security guards, janitor service or any other service, are set forth in a lease submitted, approved and on file with the secretary of revenue, (r) No premises shall be used for the management, operation or conduct of bingo games more than three calendar days in any one week, (s) No premises shall be subdivided to provide multiple premises where games of bingo are managed, operated or conducted, whether or not the multiple premises have different addresses, (r) No game of bingo shall be managed, operated or conducted on leased premises if at any time during the immediate preceding 44 hours the premises, or any leased premises within 1000 feet of them, have been used for the management, operation or conduct of a game of bingo. Section 79-4703 - (c) (1) The rental costs of the premises itself is fair and reasonable and, in no event, shall the rent charged for any session of bingo exceed 50% of the net proceeds for the session after payment of prizes and taxes or the fair and reasonable rental value determined by the secretary of revenue, whichever is less. The rental costs so charged shall be substantiated to the secretary of revenue under rules and regulations adopted by the secretary.

Kentucky	238.555 - Must be licensed - Can charge up to \$2500 for license - based upon graduated scale and on the number of sessions which the facility holds per week or other factors. (4)The amount of rent, goods, and services charged shall be reasonable and shall be based upon prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based upon percentage of gross receipts or net proceeds based upon people in attendance. The department by administrative regulation may establish standards for the determination of prevailing market values. (5) No more than 18 sessions per week can be held at any licensed organization based upon locality (and also allows for 8 sessions and 7 sessions, respectively, based upon location).
Louisiana	Section 705 (e). Commercial lessor's license and renewal fee shall be five hundred dollars. Section 715. No manufacturer, distributor, commercial lessor, or his agents or employees shall participate in the management, etc. of game. Nothing prevents them or their agent from being present to protect interests of property. (7) No lease providing for a rental arrangement for premises or equipment shall provide for payment in excess of the reasonable market rental rate for such premises or equipment and in no case shall any payment be based on a percentage of gross receipts or profits derived from a game of chance. -- State and local control over bingo gaming.
Maine	Governed by State Police - No games can be held after midnight until 7:00 am. Maine recognizes "beano" versus "bingo" which are similar in nature. Section 328 - No licensed organization can hold a game unless a commercial beano hall permit is obtained from Chief of State Police. 2.(A) Applicant shall submit 2 fingerprint cards. 5. Permit fee is \$500. Licensee or employees cannot be a member of the organization. 7. Rent or lease amount. The permittee shall charge a licensee fair market value and may not charge based upon the percentage of profit which the licensee makes for the rent or lease of a commercial beano hall. Section 17, 311. No more than one licensee may operate or conduct a game of "beano" or bingo on the same premises on the same date. Section 17, 311 - The permittee shall charge a licensee fair market value and may not charge based upon profit.
Michigan	432.109. Sec. 9. A licensee shall not incur or pay an item of expense in connection with the holding, operating, or conducting of an event except the following expenses in reasonable amounts: (c) rental of the location at which the event is conducted. Section 432.111a. Sec. 11a. Each application shall apply for a license to operate a bingo hall. (4) Licensing fee is \$50 multiplied by the number of large or small bingo occasions conducting during the 7 day week.
Minnesota	Section 349.165 - Subdivision 1. No person may lease a facility to more than one organization to conduct bingo with a current and valid bingo hall license under this section. Subdivision 4. The annual bingo hall license fee is \$2500. Section 349.18 - Subdivision 1. The board may prescribe by rule limits on the amount of rent which an organization may pay to a lessor for premises leased for lawful gambling provided that no rule of the board may prescribe a limit of less than \$1000 per month on rent paid for premises used for lawful gambling other than bingo.
Mississippi	Charitable Gaming Regulations - Table of Contents - "Reasonable Market Rental Rate" is that rate at which similar facilities or equipment available for similar purposes in the community may be leased or rented. License fee: \$2500. L. Section 10. No lease which provides for a rental arrangement for premises, or a lease of equipment, may provide any payment in excess of the reasonable market rate. No lease payment may be based on a percentage of gross receipts or profits derived from any bingo game. (Section 97-33-69(9). Section 8. AA. Section 1. Any person leasing premises for the conduct of gaming may (a.) The commercial lessor may not charge in excess of the reasonable market rental rate for the lease of the premises as determined by the average of two (2) independent appraisals. Such appraisals shall be conducted by appraisers selected by the applicant for a commercial lessors license from a list of state certified appraisers compiled and maintained by the Commission. The Commission may require a third appraisal. Lessor pays all appraisal fees. Appraisers must show comparables. Commercial lessor cannot lease for less than five hours, hold no more than two sessions within one day or more than eight sessions in one week on the premises. A licensee who holds only one session per week may conduct a six hour session. (Section 97-33-203). Section 2. Annual license fee shall be equal to five percent of the annual gross revenues derived from the lease(s). Lessor must report gross revenues to Commission on a monthly basis. Section 5. The lease providing for a rental arrangement may not be in excess of the reasonable market rental rate for such premises, and in no case shall any lease payment be based upon a percentage of gross receipts/profits from a bingo game. If a per session charge is used to determine the amount of the lease, then that per session charge may not exceed \$400 for a five hour session, or \$450 for a six hour session (Section 97-33-69(9))

Missouri	Chapter 313.025. 1. No lease providing for a rental arrangement for premises or equipment for use in the game shall provide for payment in excess of the reasonable market rental rate for such premises or equipment and in no case shall any payment be based on a percentage of gross receipts or proceeds. The reasonable market rental rate shall be determined by the commission.
Nebraska	9-255.06. (1) An individual, partnership, limited liability company, corporation, or organization which will be leasing a premises to one or more organizations for the conduct of bingo and which will receive more than two hundred fifty dollars per month (2000 - \$200) as aggregate total rent from leasing such premises for the conduct of bingo shall first obtain a commercial lessor's license from the department. The license shall be applied for on a form prescribed by the department and shall contain: 9-241.04. Premises; rental or lease; requirements. A premises may be rented or leased by a licensed organization for the purpose of conducting bingo. Such rental or lease agreement shall be in writing and may include the rental or lease of personal property, excluding bingo equipment, which is necessary in order to conduct a bingo occasion. Such rental or lease agreement shall be in accordance with the rules and regulations adopted by the department and the following: (1) Except as provided in Section 9-255.06, the premises must be rented or leased from a licensed commercial lessor; (2) All bingo occasions shall be conducted only by the organization which holds the rental or lease agreement; (3) No rental or lease payments shall be based on a percentage of the gross receipts or profits from bingo or on the number of persons attending or playing at any bingo occasion; (4) No rental or lease agreement for real or personal property shall be in excess of fair market value; (5) No rental or lease agreement for a premises shall contain any right to use bingo supplies or bingo equipment. A rental or lease agreement for bingo equipment shall be separate and distinct from that for a premises; and (6) All rental and lease agreements shall be subject to prior approval by the department.
New Hampshire	Lessee has to be licensed on their form, but there are no specific provisions regarding rent and valuation of rent.
New Jersey	Title 5-5:8-49.3. No such rental or use shall be permitted unless the commission shall determine that the payment to be made for such rental or use of the premises is fair and reasonable and that the rents of said premises are approved renters under this act. 5:8-49.4. Rentors must obtain a license from commission. 5:8-49.5 Applicant must give address. 5:849.7. License for location identified in application only. Must pay a fee. 5;8-49.10 No rents to be paid based upon net proceeds.
North Carolina	Has a lot of local enforcement. 14-309.7 (4) Must produce copy of rental agreement. Except as provided in subsection (e) of this section, an exempt organization may hold a bingo game only in or on property owned (either legally or equitably and the buildings must be of a permanent nature with approved plumbing for bathrooms and not movable or of a temporary nature such as a tent or lean-to) or leased by the organization from the owner or bona fide property management agent (no subleasing is permitted) at a total monthly rental in an amount not to exceed one and one-quarter percent (1 1/4% of the total assessed ad valorem tax value of the portion of the building actually used for the bingo games and the land value on which the building is location (not to exceed two acres) for all activities conducted therein including the playing of bingo for a period of not less than one year and actually occupied and used by that organization on a regular basis for purposes other than bingo for at least six months before the game; and all equipment used by the exempt organization in conducting the bingo game must be owned by the organization.
North Dakota	53-04.1-03. License - Fees - Application - Suspension - Revocation. A fair board shall apply for a license to conduct amusement games or devices or bingo from the attorney general at least thirty days before the operation of such games. Application must be made upon forms prescribed by the attorney general along with the submission of a fifty-dollar license fee. The license application must be signed and sworn to by the applicant and must contain the following: 1. The name and post-office address of the applicant. 2. The location at which the organization will conduct the amusement games or devices or bingo, whether the organization owns or leases the premises, and a copy of the rental agreement if it leases the premises.
Oregon	Section 464.510 (1) The Department of Justice may prohibit the operation of a licensed bingo, lotto, raffle or Monte Carlo event operation if, in the determination of the department, the rent for the premises on which the operation is conducted or the fees for services or equipment by a supplier of Monte Carlo event equipment are unreasonably high. Rent shall not be paid based on percentages of receipts or profits. (2) As used in subsection (1) of this section, "unreasonably high" means that the price charged for the space, equipment or services is significantly above the fair market value for the space, equipment or services and the amount charged for the space, equipment or services will result in comparatively small profit for the licensee.

Pennsylvania	Section 901.704. (a) Rent cannot be determined based upon proceeds. -- No specific provisions, although regulated on the local level.
Texas	Per TC Bruce Minor - Charitable Bingo Division - Can only charge \$600 per session (lessors set up this up in 1989 and it has not changed since then - with casino's close by, they do not have the competitive edge to increase the rent) - Lessors precluded from involvement - must be licensed, must post a bond, must pay a licensing fee, must provide information requested on several schedules, including personal funds schedule. When price originally set in 1989, certain lessors had this done to corner the market because they were grandfathered in and were able to lease their properties while potential lessors had to go through the application process. Licensing package previously provided. They are in the process of revising the statute relating to lessors.
Vermont	Section 2143. Nonprofit organizations. (A) reasonable expenses, as determined by fair market value, of purchasing or renting materials and equipment used for the game of chance and of printing advertisements, and of the direct purchase of advertising through established media, such as newspapers, radio and television; and (B) reasonable expenses, as determined by fair market value, for rent for the premises on which the game of chance is executed, except that rent paid prior to August 1, 1994, pursuant to a written lease in effect on June 1, 1994, and not subject to cancellation, may be deducted, whether or not such rent is reasonable, and repairs and upkeep to the premises for nonprofit organizations having ownership in premises.
Washington	WAC 230-04-040 -- If an organization is planning to pay premises rent exceeding two thousand dollars per month, including all terms, they are required to submit a pro forma plan of operations, including a market study which sets out their research procedures, planned attendance, anticipated market area and map, number of sessions, prices per bingo card and estimated sales per person, payouts, game schedule, estimated expenses and income, details of income generating activities, and any other information requested by commission. WAC 230-02-360. Lessee must set out specific areas in building upon which charitable gaming will take place. No gaming in space not identified. WAC 230-02-530. Circumstances outside the control of the licensee - defined. Factors that impact an organization's ability to meet their obligations (iii) Unanticipated increases to rent that would put the licensee in jeopardy of being in violation of net return requirements. WAC 230-04-022. Organization must provide a copy of the leas
West Virginia	Section 47-20-15. Payment of reasonable expenses from proceeds; net proceeds; net proceeds disbursement -- (a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed twenty-five percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to: (1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the bingo license application and any changes to the rental agreement were filed within ten days of being made: Provided, however, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises; (3) The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion.

**APPENDIX 9 – SUMMARY OF LIMITED SURVEY OF TIDEWATER
GAME MANAGERS --- FALL 2000**

**Virginia Charitable
Gaming Commission**



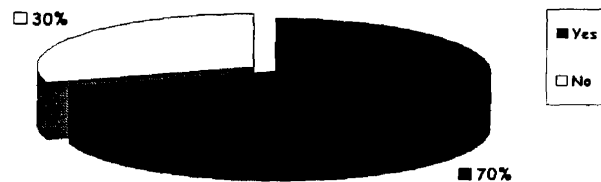
House Bill 811
Summary of Limited Survey of Tidewater
Game Managers
Fall, 2000

POPULATION

The Charitable Gaming Commission's
Survey of Game Managers of
Licensed Organizations in the
Tidewater Region Are Based Upon A
Limited Representative Sample of
Gaming Activities.

Question 1
City and location of the hall.

- ☐ 16 = Yes
- ☐ 7 = No

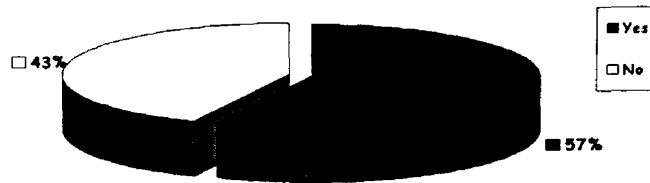


Question 2

Day of the week offered for session.

☛ 13 = Yes

☛ 10 = No

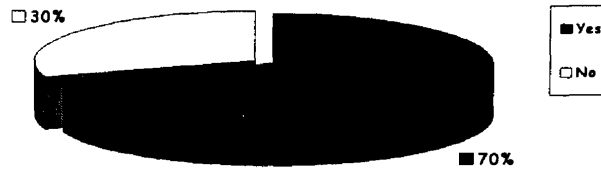


Question 3

Hall amenities such as size of hall, available parking, snack bar, cleanliness, ventilation, *i.e.*, smoke-eater system.

☛ 16 = Yes

☛ 7 = No



Question 4

The price charged for the hall, seats, tables, cleanup, etc.

☛ 14 = Yes

☛ 9 = No

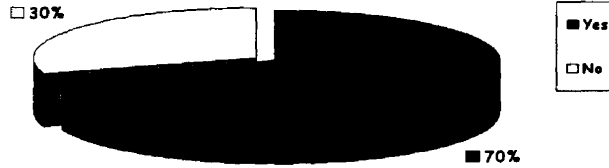


Question 5

Reputation of the hall, staff management and/or ownership.

☛ 16 = Yes

☛ 7 = No



Question 6

State of the art electronic bingo equipment used by the hall.

☛ 14 = Yes

☛ 9 = No



Question 7

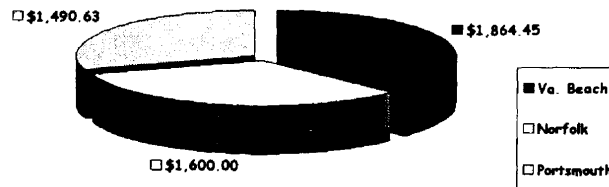
What is the total amount of rent paid to your landlord each session?

Two Sessions - Average Rent

☛ 10 Responses - Virginia Beach

☛ 5 Responses - Norfolk

☛ 4 Responses - Portsmouth

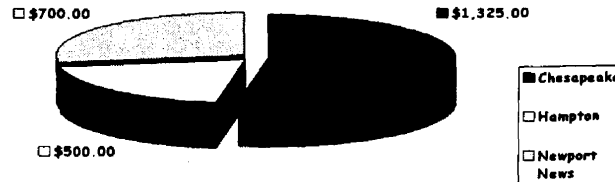


Question 8

What is the total amount of rent paid to your landlord each session?

One Session - Average Rent

- 2 Responses - Chesapeake
- 1 Response - Hampton (Average skewed by number of responses)
- 1 Response - Newport News (Average skewed by number of responses)



Other Influencing Factors for Use of Hall

- ✓ Only session open.
- ✓ Local league, neighborhood hall.
- ✓ Public wanted it, a lot of friends live in the homes around area.
- ✓ No choice.
- ✓ Knew hall manager.
- ✓ Available, good condition.

Has Your Organization Experienced Any of the Following?

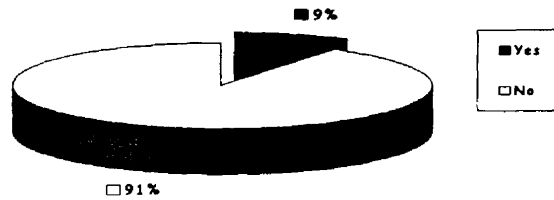
Please See Responses to Questions 9 through 18.

Question 9

Has the landlord or hall management ever suggested or directed you to use a certain supplier or made offers of compensation to you if you use a particular supplier?

2 = Yes

21 = No

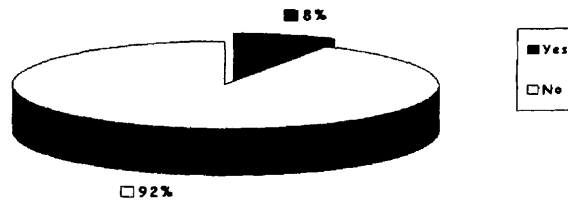


Question 10

Has the landlord or hall management ever attempted to influence or dictate the game schedule or session program?

4 = Yes

19 = No



Question 11

Are electronic gaming devices (computers) allowed in the hall where you conduct your charitable gaming?

13 = Yes

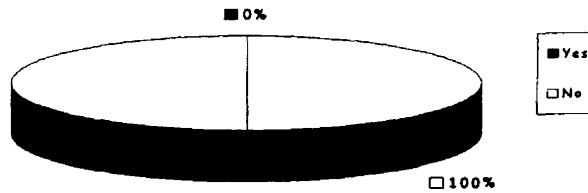
10 = No



Question 12

Are any volunteer workers compensated or supplied to your organization by the hall or landlord?

☛ 23 = No

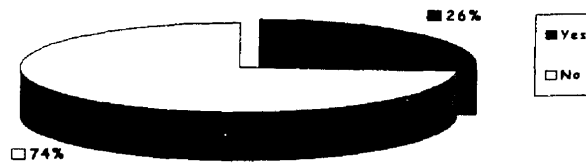


Question 13

Does your landlord adjust your rent downward or make a refund or contribution back to your organization when session attendance is low?

☛ 6 = Yes

☛ 17 = No

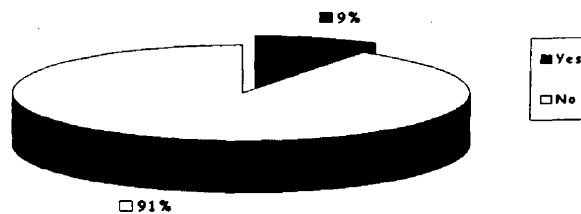


Question 14

Does your landlord control or attempt to control the prices your organization charges for packs or computers?

☛ 2 = Yes

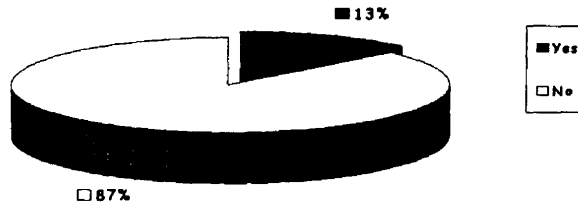
☛ 21 = No



Question 15

Does your landlord require printed advertisement for your bingo sessions?

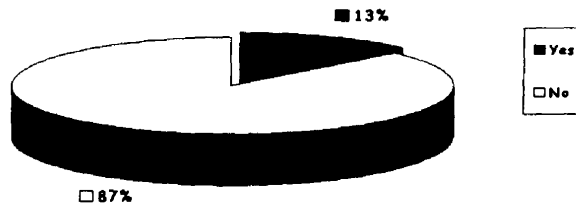
- 3 = Yes
- 20 = No



Question 16

Does your landlord require your session to pay the maximum prizes allowable by law for each game?

- 3 = Yes
- 20 = No



Question 17

Has your organization ever entertained the idea of owning a building for the conduct of charitable gaming?

- 15 = Yes
- 8 = No

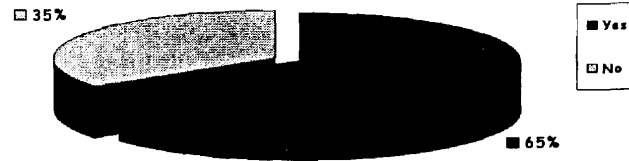


Question 18

If your answer to Question 16 was yes, would your organization offer the building to charities to rent for charitable gaming sessions?

☛ 15 = Yes

☛ 8 = No



Changes That Would Be Made if Organizations Owned Gaming Facility

- ✓ Lower rent.
- ✓ Better ventilation.
- ✓ Better snack bar.
- ✓ Enclosed non-smoking sections.
- ✓ Do more to help other groups.
- ✓ Cleaner hall.
- ✓ Keep electronic equipment working.
- ✓ Better electronics.
- ✓ More parking.

Changes That Would Be Made if Organizations Owned Gaming Facility

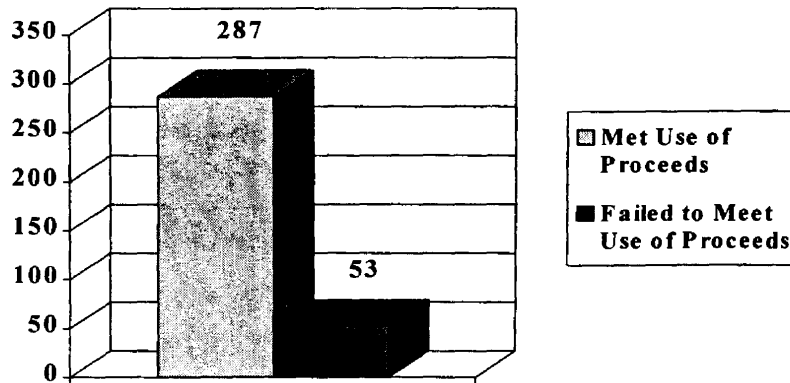
- ✓ No smoking building.
- ✓ Better time slots for sessions.
- ✓ Better restrooms.
- ✓ Wouldn't have to pay rent based on gross sales.
- ✓ Better looking hall.
- ✓ Would sell daubers, not allowed with landlord.
- ✓ Winner-take-all would be amount of sheets sold and not \$1000.

APPENDIX 10 – SUMMARY OF NON-RENTERS

Key: Region 1 – Central Virginia
 Region 2 – Tidewater Region
 Region 3 – Northern Virginia
 Region 4 – Southwest Virginia

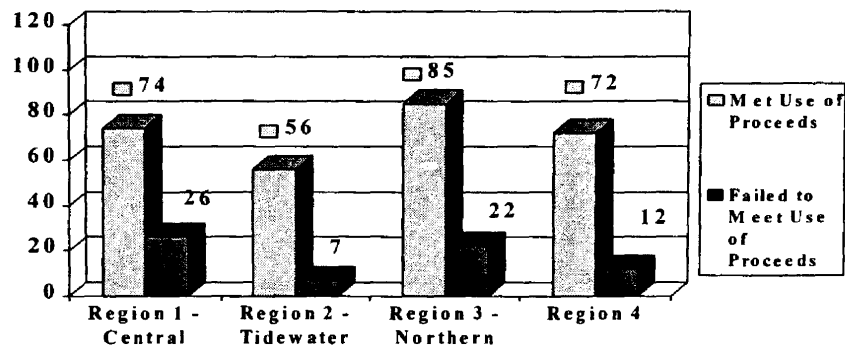
Summary of Non-Renters 1999

340 Organizations



Summary of Non-Renters By Region - 1999

340 Organizations



**APPENDIX 11 – LETTER DATED SEPTEMBER 19, 2000 FROM RALPH
L. AXSELLE, JR. TO THE CHARITABLE GAMING COMMISSION**

**LETTER DATED
SEPTEMBER 19, 2000 FROM
RALPH L. AXSELLE, JR. TO THE
CHARITABLE GAMING
COMMISSION**

PHONE: (804) 643-1991
FAX: (804) 783-6507

E-MAIL ADDRESS:
baxselle@wmcd.com

DIRECT DIAL:
(804) 783-6405

INTERNET ADDRESS:
www.wmcd.com

**WILLIAMS MULLEN
CLARK & DOBBINS**
ATTORNEYS & COUNSELORS AT LAW

A PROFESSIONAL CORPORATION

TWO JAMES CENTER
1021 EAST CARY STREET
P.O. BOX 1320
RICHMOND, VA 23218-1320

RICHMOND
VIRGINIA BEACH
NEWPORT NEWS
NORTHERN VIRGINIA
WASHINGTON, D.C.
LONDON

AFFILIATE OFFICE:
DETROIT

September 19, 2000

Format of a personal letter to the Commissioners of the Charitable Gaming Commission.

BY HAND

The Honorable _____
Commissioner
Charitable Gaming Commission

Dear Commissioner _____:

Along with my partner, Bill Waechter, and with Steven Lieberman of Virginia Beach, I represent the Virginia Bingo Group, a coalition of persons who own and operate commercial bingo facilities in the Hampton Roads area. The coalition has engaged us to represent its members' interests in connection with the study that the Commission is conducting pursuant to the second enactment clause of Chapter 1000 of the 2000 Acts of Assembly (House Bill No. 811).

By way of both introduction and background, I have been involved with policy issues related to charitable gaming for a number of years. Throughout my 16 years as a member of the Virginia House of Delegates, I served on the charitable gaming subcommittee of the Committee on General Laws. During the 1970s, I chaired a legislative study of Virginia's charitable gaming laws which ultimately resulted in significant changes in the manner in which that activity was then regulated.

In 1993, a few years after retiring from the General Assembly, I was contacted by a coalition of charitable organizations, vendors of charitable gaming supplies and commercial hall owners (i.e., landlords) that wished to promote regulation of charitable gaming at the state level rather than the local level as was then the case. The members of the coalition were motivated by concern with the lack of uniformity of statutory construction and uneven regulation of charitable gaming among the local jurisdictions. Candidly, they were also aware of a number of abuses taking place in bingo games around the state that were not being adequately addressed through local regulation.

**WILLIAMS MULLEN
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ATTORNEYS & COUNSELORS AT LAW

September __, 2000
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Continuing through the 1995 legislative session, Bill Waechter and I represented the coalition and, working with representatives of several local governments and other interested persons, developed the legislation which put in place the current system of state regulation of charitable gaming. Subsequent to the enactment of that legislation, we were closely involved in the development of the regulations that subsequently were adopted by the Charitable Gaming Commission. The members of the coalition we currently represent, most of whom were members of the earlier coalition, have therefore always been and continue to be supporters of state regulation of charitable gaming and of the Commission.

Early this year, we were engaged by the Virginia Bingo Group to oppose House Bill No. 811 as initially introduced. As I am sure you recall, that legislation sought to define the term "fair market rental value" as rent that did not exceed specified percentages of a qualified organization's receipts from charitable gaming. In effect, the legislation would have imposed a cap on rent that could be paid by an organization and received by a landlord. Moreover, the proposed legislation, by tying the rent cap to gross receipts, clearly represented a 180 degree departure from the wise policy determination embodied in the 1995 legislation that rent could not be based upon or determined by the revenue derived from charitable gaming or the number of participants. That policy was part of one of the major policy decisions made in the 1995 legislation, that landlords should have no involvement in charitable gaming other than as landlords.

The impetus for House Bill No. 811 was the inability of several organizations in the Hampton Roads area that conduct bingo on leased premises to achieve the level of use-of-proceeds prescribed by the Commission's regulations. The apparent logic of the proposal was that if rental expense could be reduced, an organization's ability to satisfy the use-of-proceeds requirement should be enhanced. In our client's view, the reduction of *any* expense associated with an organization's charitable gaming activity would have the same effect on its ability to comply with the regulation. Also, obviously, any increase in an organization's charitable gaming receipts would likewise enhance its ability to comply.

Working with the then Commission staff, we were successful in having the legislation modified to permit time to study the issues enumerated in Enactment Clause 2 of the Act: (i) the ways in which "fair market rental value" may be appropriately computed; (ii) the manner in which rents are or should be reported to the Commission; and (iii) the nexus between rents, the reporting of rents and the ability of organizations to meet the Commission's use-of-proceeds requirements.

**WILLIAMS MULLEN
CLARK & DOBBINS**
ATTORNEYS & COUNSELORS AT LAW

September __, 2000

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Three points for your consideration. (1) current law prohibits the paying or receiving more than fair market rental value. Since the 1995 legislation became effective, rents have been limited to the "current fair market rental value" of the leased premises. Existing law clearly provides that it is illegal for a charitable organization to pay or for a landlord to receive more than a fair market rental value of the lease premises. This is exactly as it should be. It is a requirement that is enforceable today by the Commission. Mr. Lieberman, in a letter to Acting Executive Secretary Lapekas dated July 10, 2000, offered the following definition of that term which we believe should guide the Commission:

Fair market rental value is ... the price which one, exercising prudence and intelligent judgment as to value, and unaffected by any compulsion, is willing to pay for rent of a facility and which another, also exercising prudence and intelligent judgment as to value, and unaffected by any compulsion, is willing to accept as rent for a facility. There are many factors to be considered in determining fair market rent, including, but not limited to, the location and condition of the premises, the market demand for the facility, and the proceeds anticipated by the tenant from the use of the facility.

(2) Many factors influence an organization's ability to comply with the use-of-proceeds requirement. Our client has provided Commission staff with the enclosed listing of 17 factors (in addition to the amount of the rent paid by renting organizations) that, based on their many years of experience as landlords, will have a significant impact on an organization's ability to comply with the use-of-proceeds requirement. The most significant of those is average attendance. Each organization that proposes to engage in charitable gaming knows (or should know) the approximate cost it will incur to engage in that activity. A certain average attendance ("critical mass" if you will) will be necessary in order to cover its expenses and comply with the Commission's regulation. The ability to achieve that average attendance will, in turn, be determined by many of the same factors that enter into the parties' determination of fair market rental value; e.g., location, size of facility, amenities, day and time of session.

(3) Current law treats differently the rent paid by a charitable organization that does not own its facility and the mortgage paid by an organization that does own its facility. An organization that owns the facility where it conducts charitable gaming does not have to treat its mortgage payments as an expense of charitable gaming. Instead, those mortgage payments are considered to be a proper use of the proceeds of its charitable gaming activity. In and by itself, that is not an inappropriate approach.

**WILLIAMS MULLEN
CLARK & DOBBINS**
ATTORNEYS & COUNSELORS AT LAW

September __, 2000

Page 4

The problem is that when an equally meritorious charitable organization that does not own its facility pays rent in the same amount as the mortgage, that rent payment is treated as an expense of charitable gaming, not as an appropriate use of proceeds for charitable purposes. In other words, the rental costs of the facility paid by one charitable organization is an expense because it does not own its facility, while the same amount paid out as a mortgage payment by an identical organization that owns its facility is treated as use of charitable proceeds. You can see why this makes it very difficult to compare with the use-of-proceeds requirements between organizations that own and those that do not own their facility.

We look forward to participation in the Commission's study we trust that each member of the Commission as well as Commission staff will not hesitate to call on us if we can assist in any manner.

Sincerely yours,



Ralph L. "Bill" Axselle, Jr.

RLA, Jr./dc

cc: Stanley J. Lapekas
Acting Executive Secretary

Steven Lieberman, Esquire

C. William Waechter, Jr., Esquire

The Virginia Bingo Group

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**FACTORS, IN ADDITION TO RENT PAYMENTS, THAT HAVE
A SIGNIFICANT IMPACT ON AN ORGANIZATION'S ABILITY
TO SATISFY THE USE-OF-PROCEEDS REQUIREMENT**

1. Day of Week
2. Time of Day
3. Advertising and Promotions
4. Average Attendance
5. Location
6. Competition among games
 - A) Military Base Games
7. Experience and Business Capability of Volunteers
8. Number and skills of Volunteers
9. Integrity of Volunteers
10. Facility – Condition
11. Facility – Seating Capacity
12. Equipment at Game
13. Caller
14. Prices Charged
15. Program Payout
16. Demographics (per capita income)
17. Type of Player – Recreation or Serious

