

CHARITABLE GAMING BOARD

Agenda

Department of Agriculture and Consumer Services

Pop's Bingo World

210 Giant Drive

Richmond, Virginia

Wednesday, September 16, 2020

12:30 PM

1. Call to Order
2. Roll Call
3. Message from the Chair
4. Approval of the Minutes – September 4, 2020
5. New Business
 - Review the Department's comments on the new regulations to govern Texas Hold'em Poker Tournaments.
6. Date of Next Board Meeting
7. Public Comment

Adjournment

I. Definitions of terms used in the regulations.

(a) As used in the regulations prescribed in this part by the Virginia Charitable Gaming Board unless the context otherwise requires:

- 1) The term “Board” means the Virginia Charitable Gaming Board, as created pursuant to Virginia Code § 2.2-2455;
- 2) The “Department” means the Virginia Department of Agriculture and Consumer Services;
- 3) The term “Game Operator” means person or entity to which a valid permit has been issued by the Department to operate or manage poker.
- 4) The term “Poker” means Texas Hold’em, as defined in Virginia Code § 18.2-340.16;
- 5) The term “Qualified Organization” means any organization to which a valid permit has been issued by the Department to conduct charitable gaming or any organization that is exempt pursuant to § 18.2-340.23;
- 6) The term “Office” means the Virginia Office of Charitable and Regulatory Programs (OCRCP), which promotes the integrity of charitable gaming activities in the Commonwealth and is responsible for issuing or renewing charitable gaming permits to qualified organizations, as well as the regulation of charitable gaming activities in the Commonwealth.

II. Compliance with Chapter.

No games of Poker for charitable gaming purposes may be conducted except in compliance with the requirements of this Chapter. Upon conforming with the requirements of this Chapter, Qualified Organizations and Game Operators, with respect to poker, shall be deemed to be in compliance with the provisions of the Charitable Gaming Regulations, set forth in 11VAC15-40-10 *et seq.*

III. Who may conduct poker.

Except as provided in this paragraph, only Qualified Organizations who hold the following permits issued by the Department may host, manage, or operate poker: (i) a charitable gaming permit that authorizes—poker and (ii) a game operator permit; notwithstanding the foregoing, a Qualified Organization may still host poker if it holds a charitable gaming permit that authorizes poker and, in conformity with the requirements

of Section VI.C. below, contracts with a third-party Game Operator holding a game operator permit issued by the Department to manage and operate its poker games or events.

IV. Charitable Poker Permit.

A. Prior to conducting poker, a Qualified Organization shall obtain and maintain a charitable gaming permit that authorizes poker in accordance with Section 11VAC15-40-30 (other than Subsection 11VAC15-40-30E.3) and indicate on its application its intent to conduct poker, subject to the following requirements:

B. With respect to poker, the department-prescribed application form (whether as a modification to its standard form or as an addendum specifically with respect to poker) shall include the following items:

1. The designation and identity of the Organization's poker host representative, who shall be an individual person and shall be a responsible party on behalf of the Qualified Organization, and their valid state or federal identification;

2. A statement whether the Qualified Organization itself will be the game operator or will contract with a third-party poker game operator. If a third-party game operator is contracted by the Qualified Organization, the identity of the third-party game operator shall be disclosed;

3. The location of the poker event and identity of the property owner of the location. In the event that a Qualified Organization needs to change location after a permit is issued, such change shall be affected by a gaming amendment acknowledged by the Office;

4. A completed disclosure form, as provided by the Department, that identifies: (i) the legal and beneficial owner(s) of the property, (ii) the legal and beneficial owner(s) of the game operator, whether the Qualified Organization itself or a third-party, and (iii) any interested persons of the Qualified Organization that has a legal or beneficial interest in either the poker location's property or in the Game Operator;

5. The following attachments:
 - i. Articles of Incorporation;
 - ii. Bylaws;
 - iii. Membership list (if any);
 - iv. Previous year's tax return;

- v. IRS determination letter granting tax exempt status to the Qualified Organization;
 - vi. Copies of any contract, if applicable, with third-party game operator(s); and
 - vii. Copies of lease(s) or proof of property ownership.
6. A certification that the Qualified Organization meets the requirements of this Chapter.
- C. If the Qualified Organization is seeking the issuance of a new annual permit in the first instance, then it shall submit those documents as prescribed in Paragraph IV, C.(5), herein. If the Qualified Organization is seeking a renewal of an existing permit, then it shall not be required to submit those documents as prescribed in Paragraph IV, C(5), herein unless there are any changes in the information requested by Paragraph IV, C(5)(i)-(vii), which will require supplementation of the change(s) to the Office.
- D. Any two or more Qualified Organizations may jointly organize and conduct poker events provided both have fully complied with all other provisions herein. Any two or more 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 poker events and (ii) required to furnish to the Department a written report setting forth the location(s) 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 Office shall issue a joint permit. No poker events shall be jointly conducted until the joint permit issued pursuant to subsection D herein is obtained by the Qualified Organizations. Two or more Qualified Organizations who obtain a joint permit may also contract with a third-party Game Operator for operating the poker event(s), such to provisions for contracting with a third-party Game Operator.

V. Game Operator Permit.

Any Qualified Organization that intends to operate or manage a poker event without a third-party Game Operator shall be required to meet the requirements as a Game Operator (in addition to being a Qualified Organization) and is therefore subject to the requirements of this Section V. Any person or entity that intends to operate or manage poker shall first obtain and maintain a game operator permit. To be eligible for a game operator permit, the

person or entity shall submit an application on the department-prescribed form, and meet the following requirements:

- A. Subject its interested persons to a background investigation as described in Section 11VAC15-40-30. E1. E.2. E.4. E.5.
- B. Provide a game manager for each poker event it operates or manages and require that only such person or persons serve as a game manager at each poker game it operates;
- C. Provide qualified dealers in such number as may be required to run poker event(s) and require that only such person(s) deal poker hands;
- D. Submit Form B and identify any and all dealers on staff;
- E. Any Game Operator providing services to a Qualified Organization shall complete a disclosure form, as provided by the Department, that identifies: (i) the legal and beneficial owner(s) of the Game Operator, (ii) a list of all Qualified Organizations it currently and reasonably anticipates serving, and (iii) any interested persons of the Qualified Organization that has a legal or beneficial interest in either the poker location's property or in the poker Game Operator; and
- ~~F.~~ Attach the following:
 - i. Articles of Incorporation;
 - ii. Bylaws/Operating Agreement;
 - iii. List of all organizations and locations in which the Game Operator operates or manages poker and a copy of the agreements of each organization, if any;
 - iv. A copy of written internal control policies and procedures including staff training conforming with poker requirements; and
 - v. A certificate of bond from the Game Operator with a bond amount that shall be sufficient to cover any liability resulting from the poker event.

VI. Compliance Matters.

A. Operations of Games.

1. Participation in Games.

- i. Qualified Organizations and third-party game operators can only host, operate or manager poker with the –required permit(s), and only with the personnel listed on the applicable permit application.
- ii. Any personnel that are involved in hosting, operating, or managing-a poker event including, but not limited to, dealers, managers, charitable host representative, landlord or lessor, or those having an ownership or managerial interest in the Qualified Organization or the third-party Game Operator company-may not play poker at any time whatsoever. This prohibition exists only at the location such people are hosting, operating, or managing-a poker event.

2. Operations of Games.

- i. Game operator(s) must hold a Game Operator's permit;
- ii. At all times, a game manager listed in a Game Operator permit should be present;
- iii. Badges for charitable host representatives, game manager, dealers, and any other staff must be worn at all times during any poker event. The Qualified Organization or third-party Game Operator must provide the badges required herein;
- iv. If the poker event is conducted by a third-party Game Operator, then any and all liability arising from or in connection with the poker event shall solely be a liability for the third-party Game Operator, and no liability arising from or in connection with the poker event, where the poker event is conducted by a third-party Game Operator, shall be imposed upon the Qualified Organization;
- v. Any two or more qualified organizations may jointly organize and conduct poker events provided both have fully complied with all other provisions herein. Any two or more 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 poker events and (ii) required to furnish to the Department 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.

- v. Both the game manager and charitable host representative must sign off on a daily reconciliation summary.

3. Conduct of Poker Games.

- i. All individuals participating as a player in any poker event must be at least eighteen (18) years-old to play;
- ii. During the Poker event, Qualified Organizations and third-party Game Operators may award players participating in the event prizes of value, the value of which may be determined by the game manager, under the following conditions, but not limited to:
 - (a) A player, within a specific period of time as determined by the game manager, wins the highest ranked hand;
 - (b) A player sitting on the seat randomly determined by the game manager, at a specific period of time as determined by the game manager;
 - (c) Every player sitting at a single table that is randomly determined by the game manager, at a specific period of time as determined by the game manager;
 - (d) A player that loses a hand that is the highest losing ranking hand, within a specific period of time as determined by the game manager;

- (e) The last player who remains in the event who participated in the last man standing bet;
 - (f) An amount of chips, as determined by the game manager, that are placed into the pot at a randomly selected table by the game manager before the hand begins, before any players place any blinds; or
 - (g) Those players who pay an additional fee to receive an additional poker chip for use in the event may be awarded prizes based on how long such player remains in the event, as determined by the game manager.
 - iii. The game manager (a) shall decide as to how the rules of poker are to be interpreted, applied, and obeyed during the competition and who shall apply the ranking of hands and the rules of the game as governed by the official rules of the Poker Tournament Directors Association and (b) shall apply the code of conduct and etiquette as governed by Robert's Rules of Poker.
- 4. Qualified Organizations and any third-party game operators must display their current charitable gaming permit that authorizes—Poker, the national Gambling Hotline phone number, and any house policies adopted by the game manager.
- 5. Qualified Organizations and any third-party game operators must have available the official rules of the Poker Tournament Directors Association and the code of conduct and etiquette from Robert's Rules of Poker.
- 6. Qualified Organizations and any third-party Game Operators who have been contracted by any Qualified Organizations to operate as a third-party Game Operator shall not conduct poker at any facility or on any premises that conducts gaming for profit.

7. Qualified Organizations and third-party Game Operators shall ensure the integrity of non-electronic supplies including, but not limited to, poker chips and playing cards.
8. Qualified Organizations and third-party Game Operators shall ensure that the poker chips and cards are not counterfeit or tampered with.

B. Electronic Equipment.

1. Qualified Organizations and third-party Game Operators using any electronic devices for the conduct of poker shall ensure that the devices, including the underlying software, are laboratory tested and approved by the Office for verification that such devices or software performs as advertised.

C. Game Operator Agreement Requirements.

1. Qualified Organizations contracting with a third-party game operator must comply with the following conditions:
 - i. The Qualified Organization must enter into a written contract with the third-party game operator (the “Agreement”);
 - ii. The Agreement must include the duration of the contract period and the parties’ termination rights;
 - iii. The Agreement shall not permit more than 50% of-poker proceeds (net of prizes), which may go to the Game Operator and any percentage split must be specifically identified in the Agreement;
 - iv. Expenses related to the event shall be negotiated between the Qualified Organization and the third-party Game Operator, which shall be specifically identified in the Agreement; and
 - v. The Game Operator may not charge or collect any fees or other forms of payment from the Qualified Organization other than its percentage share referred to in Paragraph VI., C(1)(iii) above, including in exchange for products or services provided to by the Game Operator to the Qualified Organization.

- D. The audit fee required by §§ 18.2-340.31(B) and 18.2-340.31 (D), shall be paid by the Qualified Organization to the Treasurer of Virginia but shall be shared equally between the Qualified Organization and the third-party Game Operator.
- E. The Qualified Organization and the third-party Game Operator shall provide up-to-date-disclosures if at any time the Qualified Organization or the third-party Game Operator discovers that the information provided in accordance with Paragraphs IV., C(1)-(7) above has changed, or is otherwise found to be inaccurate; the Qualified Organization or Game Operator, as applicable, shall submit updated or corrected information to the Office within three (3) business days of discovering the change or inaccuracy.
- F. Record Keeping.
 - 1. Qualified Organizations shall comply with the following recordkeeping requirements for all poker events:
 - i. Each Qualified Organization shall maintain for three years a complete written record of (a) all charitable gaming sessions using Department prescribed forms or reasonable facsimiles thereof approved by the Office; (b) the name and address of each individual to whom is awarded any charitable gaming prize that meets or exceeds the requirements of Internal Revenue Service Publication 3079, as well as the amount of the award; (c) an itemized record of all receipts and disbursements, including operating costs and use of proceeds incurred in operating poker events; (d) all operating expenses including rent, advertising, and security and copies of invoices for all such expenses shall also be maintained. The written record requirements herein shall be submitted to the Office each quarter and no later than 60 business days from when the quarter ends. Additionally, Qualified Organizations shall file their annual report containing the information required herein for all four (4) quarters within 60 business days from the year ending.
 - ii. The failure to file reports within 60 days of the time such reports are due shall cause the automatic revocation of the permit, and no organization shall

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

2. The Qualified Organization and the third-party Game Operator shall each maintain independent records.
3. Both the game manager and charitable host representative(s) must sign the game reconciliation form. The game reconciliation form shall contain the following: (i) aggregate cash taken in as game revenue, (ii) aggregate prizes as paid out as disbursements, and (iii) net proceeds to be shared by the Qualified Organization and the third-party Game Operator. The game manager must sign the game reconciliation form at the end of each event and the charitable host representative(s) must sign the game reconciliation form within 72 hours of the conclusion of each event, both of whom may sign with commercially available electronic document signing software.
4. The predetermined percentage of gross receipts that shall be used for the Qualified Organization's purposes for which the organization is specifically chartered or organized shall be at least two and a half (2.5%) percent of gross proceeds.

VII. Penalties.

- A. Failure to disclose.
 1. In the event that any member of a Qualified Organization, any third-party Game Operator, or any person(s) with an interest in the real estate where the poker event occurs (or will occur) fails to report an overlapping interest in any of the following -- the poker operations, the location or real estate where the poker event occurs or will occur, the membership in the Qualified Organization, its

Board, or any interest in the third-party Game Operator -- then that person shall have his Game Operator permit revoked for a period of one (1) year. Reconsideration of the revocation may be presented to the Board, which the Board may reissue at its sole discretion.

- B. Any Qualified Organization that has been found conducting events of poker without a permit may not qualify for a permit at any time in the future, until such time as may be determined by the Board.
- C. Failure of any Game Operator or third-party Game Operator to comply with any provisions of these regulations may result in a loss or suspension of their permit(s) for a period of up to one (1) year at the discretion of the Board.
- D. A standing subcommittee of the Board shall be created comprising of at least three (3) individuals from the Board who shall review and address complaints and make recommendations to the entire Board. The Board shall decide and make all final decisions.

CHARITABLE GAMING BOARD
CHAPTER XX
TEXAS HOLD'EM POKER TOURNAMENT DRAFT REGULATIONS

THE VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (VDACS) PROVIDES THE FOLLOWING COMMENTS AND REVISIONS IN THE BOXES BELOW TO THE BOARD FOR ITS CONSIDERATION. THESE COMMENTS AND REVISIONS ARE THE SUBSTANTIVE ISSUES IDENTIFIED BY VDACS TO DATE.

11VAC15-XX-10. Definitions.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

“Board” means the Virginia Charitable Gaming Board, as created pursuant to Virginia Code § 2.2-2455.

“Department” means the Virginia Department of Agriculture and Consumer Services;

“Game operator” means person or entity to which a valid permit has been issued by the Department to operate or manage poker;

- **These draft regulations require a game operator to be licensed by the Department. The Virginia Charitable Gaming Law (Va. Code § 18.2-340.15 et seq.) (Law) does not appear to require that the Department license a game operator nor does the Law appear to authorize the Board to require a game operator license. The Law specifically requires a qualified organization, manufacturer of electronic pull-tab systems, network bingo provider, or supplier to be licensed by the Department. Therefore, the Board, through these regulations, may not have authority to require a game operator to be licensed by the Department. The Department suggests that further review is needed and that the Office of the Attorney General make a determination as to the Board’s authority related to this requirement.**
- **The Department recommends that the term “conduct” be included with the terms “operate or manage poker.” The Law recognizes three levels of involvement with all charitable gaming activities, which now includes Texas Hold'em poker tournaments. Those levels of involvement include (1) management, (2) operation, and (3) conduct. Since the qualified organization or game operator will have individuals who will serve as a dealer, their actions will fall within the legal definition of “conduct.” Therefore, the term “conduct” should be included within the phrase “operate or manage poker.” The Charitable Gaming Regulations,**

11VAC15-40-10, also defines the terms management, operation, and conduct. The Department recommends that the Board define these terms in the Texas Hold'em regulations as well.

“Poker” means Texas Hold'em, as defined in Virginia Code § 18.2-340.16;

“Texas Hold'em” is not defined in the Charitable Gaming Law, Va. Code § 18.2-340.16. This section defines the terms “Texas Hold'em poker tournament” and “Texas Hold'em poker game,” but not the term “poker” or “Texas Hold'em.” The term “poker” should be defined specifically as “Texas Hold'em poker tournament” in order to prevent confusion and ensure charitable organizations only play the type of poker allowed by the Law. The term should apply to all references of “poker games” and “poker events” throughout the draft regulations.

“Qualified organization” means any organization to which a valid permit has been issued by the Department to conduct charitable gaming or any organization that is exempt pursuant to § 18.2-340.23;

“Office” means the Virginia Office of Charitable and Regulatory Programs (OCRCP), which promotes the integrity of charitable gaming activities in the Commonwealth and is responsible for issuing or renewing charitable gaming permits to qualified organizations as well as the regulation of charitable gaming activities in the Commonwealth.

Since the name of the Department's programs (Office) can change at any time, the draft regulations should not reference a specific “Office.” Instead, it is recommended that the term “Department” be used in its place. As such, any reference to “office” should be replaced throughout the regulations with “Department.” Additionally, the use of only “Department” in lieu of an office is consistent with the Charitable Gaming Regulations. Under 11VAC15-40-10 of the Charitable Gaming Regulations, the Department is defined as “the Virginia Department of Agriculture and Consumer Services.”

11VAC15-XX-20. Compliance.

No games of poker for charitable gaming purposes may be conducted except in compliance with the requirements of this chapter. Upon conforming with the requirements of this chapter, qualified organizations and game operators, with respect to poker, shall be deemed to be in compliance with the provisions of the Charitable Gaming Regulations, set forth in 11VAC15-40-10 et seq.

The Compliance section of these draft regulations provides that an organization is in

compliance with the Law and Charitable Gaming Regulations when meeting all requirements of the Texas Hold'em regulation. However, there are additional requirements in the Charitable Gaming Regulations that are not addressed in these draft regulations, such as (i) paying late penalty fees as required and late submission of financial reports, (ii) creating a separate charitable gaming account, as required, and (iii) making deposits to such an account within two business days. Additionally, 11VAC15-40-110 of the Charitable Gaming Regulations prohibits a landlord from being involved with any qualified organization that is leasing or renting from him for the purposes of conducting any charitable gaming activity. It is unclear whether the Board is intending to exclude these requirements or restrictions with this particular section.

11VAC15-XX-30. Who may conduct poker.

Except as provided in this paragraph, only qualified organizations who hold the following permits issued by the department may host, manage, or operate poker: (i) a charitable gaming permit that authorizes poker and (ii) a game operator permit; notwithstanding the foregoing, a qualified organization may still host poker if it holds a charitable gaming permit that authorizes poker and, in conformity with the requirements of 11VAC15-XX-60.C. below, contracts with a third-party game operator holding a game operator permit issued by the department to manage and operate its poker games or events.

- **This section of the draft regulations uses the term “host.” However, this term is not defined in either the proposed regulation or the Law. Therefore, its actual meaning is unclear. The Board may wish to define this term to ensure its actual meaning is understood and the responsibilities of the “host” are clear.**
- **The Department recommends that the term “conduct” be included within the phrase “operate or manage poker.” The Law recognizes three levels of involvement with all charitable gaming activities, including Texas Hold'em poker tournaments. Those levels of involvement include (1) management, (2) operation, and (3) conduct. Since the qualified organization or game operator will have individuals who will serve as a dealer, their actions will fall within the legal definition of “conduct.” Therefore, the term “conduct” should be included within the phrase “operate or manage poker.”**

11VAC15-XX-40. Charitable poker permit.

A. Prior to conducting poker, a qualified organization shall obtain and maintain a charitable gaming permit that authorizes poker in accordance with Section 11VAC15-40-30 (other than Subsection 11VAC15-40-30E.3) and indicate on its application its intent to conduct poker, subject to the following requirements:

- **Subdivision 11VAC15-40-30(E) of the Charitable Gaming Regulations stipulates that a background investigation will be conducted on an applicant for a charitable gaming permit. This investigation will include an inquiry into criminal history, etc. Subdivision 11VAC15-40-30(E)(3) of the Charitable Gaming Regulations specifically states that the investigation will include “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.” These draft regulations remove the requirement for the Department to inquire as to whether the organization has entered into a contract with, or has otherwise employed for compensation, any persons for the purposes of organizing, managing, or conducting any Texas Hold’Em poker tournament. As such, the Board is prohibiting the Department from inquiring on such a matter.**
- **Subdivision 18.2-340.33(5) of the Law states, “no person shall receive any remuneration for participating in the management, operation or conduct of any charitable game.” Therefore, it is unclear whether a third-party game operator can compensate individuals involved in a Texas Hold’em poker tournament. Further review is needed, and a determination should be made by the Office of the Attorney General.**
- **The department is unsure what the “following requirements” are in these draft regulations. There is a colon at the end of the final sentence in subsection A, but no further requirements are listed.**

B. With respect to poker, the department-prescribed application form (whether as a modification to its standard form or as an addendum specifically with respect to poker) shall include the following items:

1. The designation and identity of the Organization's poker host representative, who shall be an individual person and shall be a responsible party on behalf of the Qualified Organization, and their valid state or federal identification;

- **This section of the draft regulations uses the term “host representative.” However, the term host “representative” is not defined. Additionally, there appears to be no established tasks for the “host representative” to perform during the Texas Hold’em poker tournament, when the tournament is managed, operated, and conducted by a third-party game operator. The Board may wish to define the term “host representative” and identify any specific responsibilities or tasks to perform for the “host representative” during a Texas Hold’em poker tournament.**
- **It is recommended that the terms “valid state or federal identification” be replaced with “a photo identification, such as a driver’s license or other government-issued identification.” The recommended replacement language in the sentence above is consistent with the requirements in 11VAC15-40-50(H) of**

the Charitable Gaming Regulations. In addition, the requirement to have a photo identification is important to visually match the person to their identification. As such, the Board may want to clarify.

- **It is unclear how information related to a valid state or federal identification will be transmitted via a form. The Board may want to clarify.**

2. A statement whether the Qualified Organization itself will be the game operator or will contract with a third-party poker game operator. If a third-party game operator is contracted by the Qualified Organization, the identity of the third-party game operator shall be disclosed;

3. The location of the poker event and identity of the property owner of the location. In the event that a Qualified Organization needs to change location after a permit is issued, such change shall be affected by a gaming amendment acknowledged by the Office;

4. A completed disclosure form, as provided by the Department, that identifies: (i) the legal and beneficial owner(s) of the property, (ii) the legal and beneficial owner(s) of the game operator, whether the Qualified Organization itself or a third-party, and (iii) any interested persons of the Qualified Organization that has a legal or beneficial interest in either the poker location's property or in the Game Operator;

5. The following attachments:

a. Articles of Incorporation;

b. Bylaws;

c. Membership list (if any);

d. Previous year's tax return;

e. IRS determination letter granting tax exempt status to the qualified organization;

f. Copies of any contract, if applicable, with third-party game operator(s); and

- **These draft regulations appear to allow verbal agreements between the qualified organization and third-party game operators, since the draft regulations state "copies of any contract, if applicable" with third-party game operator(s). Section 11VAC15-40 of the Charitable Gaming Regulations require all agreements between the qualified organization and outside interests to be in writing. For the purposes of maintaining integrity and transparency within charitable gaming, the Board may wish to consider requiring that contracts between the qualified organization and third-party operators be in writing. Additionally, a written**

contract will enable the Department to verify, after conclusion of the tournament, that a third-party game operator is authorized by the qualified organization to manage, operate, and conduct the Texas Hold'em poker tournament on behalf of the qualified organization.

- **The draft regulations do not appear to prohibit any monetary exchange outside of the agreed upon contractual obligations. The Board may wish to prohibit such exchanges in order to promote integrity and transparency in charitable gaming.**

g. Copies of lease(s) or proof of property ownership.

6. A certification that the qualified organization meets the requirements of this chapter.

The Department is unsure how the qualified organization will meet the certification requirement as draft regulations do not define “certification.”

C. If the qualified organization is seeking the issuance of a new annual permit in the first instance, then it shall submit those documents as prescribed in Paragraph IV, C.(5). herein. If the qualified organization is seeking a renewal of an existing permit, then it shall not be required to submit those documents as prescribed in Paragraph IV, C(5), herein unless there are any changes in the information requested by Paragraph IV, C(5)(i)-(vii), which will require supplementation of the change(s) to the office.

The Department believes that the reference to “Paragraph IV, C.(5)” above is incorrect and should reference Paragraph IV.B.(5). This reference will need to be corrected to reflect the appropriate paragraph, which the Department has renumbered to 11VAC15-xx-40(B)(5).

D. Any two or more qualified organizations may jointly organize and conduct poker events provided both have fully complied with all other provisions herein. Any two or more 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 poker events and (ii) required to furnish to the department a written report setting forth the location(s) 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 office shall issue a joint permit. No poker events shall be jointly conducted until the joint permit issued pursuant to subsection D herein is obtained by the qualified organizations. Two or more qualified organizations who obtain a joint permit may also contract with a third-party game operator for operating the poker event(s), such to provisions for contracting with a third-party game operator.

§ 18.2-340.29 of the Law authorizes a joint permit for bingo only and does not mention Texas Hold'em poker tournaments. Therefore, it is unlikely the Board, through these

regulations, can authorize a joint permit for Texas Hold'em poker tournaments. Further review is needed, and a determination should be made by the Office of the Attorney General.

11VAC15-XX-50. Game operator permit.

Any qualified organization that intends to operate or manage a poker event without a third-party game operator shall be required to meet the requirements as a game operator (in addition to being a qualified organization) and is therefore subject to the requirements of this Section V. Any person or entity that intends to operate or manage poker shall first obtain and maintain a game operator permit. To be eligible for a game operator permit, the person or entity shall submit an application on the department-prescribed form, and meet the following requirements:

- **The draft regulations do not mention an application fee for a game operator's license. All volunteer fire departments, rescue squads, and their auxiliaries are exempted from all charitable gaming fees, including licensing fees.**
- **Under this section, the Board is requiring a qualified organization, if it wishes to administer its own Texas Hold'em poker tournament, to obtain a game operator's license as well as a charitable gaming permit. If the Board chooses to assess a game operator's license, then the qualified organization will pay that fee in addition to the \$200 fee to obtain a charitable gaming permit.**

1. Subject its interested persons to a background investigation as described in Section 11VAC15-40-30. E1. E.2. E.4. E.5;

- **Under subdivision 11VAC15-40-30(E) of the Charitable Gaming Regulations, a background investigation will be conducted on an applicant for a charitable gaming permit. This investigation will include an inquiry into criminal history, etc. Specifically, subdivision 11VAC15-40-30(E)(3) of the Charitable Gaming Regulations states that the investigation will include "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." These draft regulations remove the requirement for the department to inquire as to whether the organization has entered into a contract with, or has otherwise employed for compensation, any persons for the purposes of organizing, managing, or conducting any Texas Hold'Em poker tournament. Section 18.2-340.33(5) of the Charitable Gaming Law states that "no person shall receive any remuneration for participating in the management, operation or conduct of any charitable game." Therefore, it is unclear whether a third-party game operator can compensate individuals involved**

in a Texas Hold'em poker tournament. Further review is needed, and a determination should be made by the Office of the Attorney General.

- **The term “interested person” is undefined in these draft regulations. Section 11VAC15-40-10 of the Charitable Gaming Regulations defines the term “interested person.” The Board may wish to consider that definition.**

2. Provide a game manager for each poker event it operates or manages and require that only such person or persons serve as a game manager at each poker game it operates;

- **Game manager is undefined in the regulation and the roles and responsibilities of a game manager are unclear.**

3. Provide qualified dealers in such number as may be required to run poker event(s) and require that only such person(s) deal poker hands;

- **The Department believes an additional section is needed to require dealers and others involved with the Texas Hold'em poker tournament to comply with subdivision § 18.2-340.33 (12) of the Law prior to employment. The Board should ensure that the qualified organization and third-party game operator retain records in compliance with this subdivision for a minimum of three years, at the close of the fiscal year. This length of record retention is also consistent with the Charitable Gaming Regulations.**
- **The term “qualified dealer” is undefined. The Board may wish to determine what constitutes a “qualified dealer” and include it in the definitions section of these draft regulations.**

4. Submit Form B and identify any and all dealers on staff;

There is no definition or explanation of Form B and it is unclear to what this is referencing.

5. Any game operator providing services to a qualified organization shall complete a disclosure form, as provided by the department, that identifies: (i) the legal and beneficial owner(s) of the game operator, (ii) a list of all qualified organizations it currently and reasonably anticipates serving, and (iii) any interested persons of the qualified organization that has a legal or beneficial interest in either the poker location's property or in the poker game operator; and

- The term “legal and beneficial owner” is undefined, and it is unclear as to its intended meaning within these draft regulations. The Board may wish to define the term “legal” and “beneficial” owner.
- The term “interested persons” is undefined in these draft regulations. The Board may wish to define this term and consider a similar language to the legal definition of “interested person” as provided in Section 11VAC15-40-10 of the Charitable Gaming Regulations to ensure consistency with the draft regulations.
- This section of the draft regulation does not prohibit individuals involved with a qualified organization from having a financial interest or ownership in a third-party game operator nor does it prohibit a qualified organization from using this particular operator to administer its Texas Hold’em poker tournament. The Charitable Gaming Regulations restricts in some way the following individual’s interest in a qualified organization’s charitable gaming activities: (i) the landlord is restricted under 11VAC15-40-110, (ii) the manufacturer of electronic pull-tab systems is restricted under 11VAC15-40-147, (iii) the network bingo provider is restricted under 11VAC15-40-440, and (iv) the supplier is restricted under 11VAC15-40-120. While a third-party game operator will have a different relationship with the qualified organization than a landlord, manufacturer, network bingo provider, or supplier, the Board may wish to consider ensuring there are no conflicts of interest between a qualified organization and an operator who is hired to administer the Texas Hold’em poker tournament. Additionally, the Board may wish to ensure that there are no conflicts of interest between the third-party operator and landlord in circumstances in which the operator does not own the building used to conduct the Texas Hold’em poker tournament.

6. Attach the following:

a. Articles of Incorporation;

b. Bylaws/operating agreement;

c. List of all organizations and locations in which the game operator operates or manages poker and a copy of the agreements of each organization, if any;

- These draft regulations appear to allow verbal agreements between the qualified organization and third-party game operators, especially since it states “copies of any contract, if applicable” with third-party game operator(s). The Charitable Gaming Regulations require all agreements between the qualified organization and outside interests to be in writing. For the purposes of maintaining integrity, transparency, and consistency within charitable gaming, the Board may wish to consider requiring that contracts between the qualified organization and third-party operators be in writing. Additionally, a written contract will enable the

Department to verify that a third-party game operator is authorized by the qualified organization to manage, operate, and conduct the Texas Hold'em poker tournament on the qualified organization's behalf after the conclusion of the tournament.

- **The draft regulations do not appear to prohibit any monetary exchange outside of the agreed upon contractual obligations. The Board may wish to prohibit such exchanges in order to promote integrity and transparency in charitable gaming.**

d. A copy of written internal control policies and procedures including staff training conforming with poker requirements; and

- **Under this section of the draft regulations, the game operator and third-party game operator must submit written internal control policies and procedures. The Department is unclear as to its role with respect to these documents. As written, the Department will simply receive the documents as part of an application with no requirement to review them or ascertain whether such internal control policies and procedures are sufficient to control the cash flow generated at the Texas Hold'em poker tournament.**
- **These draft regulations establish no minimum standards as to what is considered sufficient internal control policies and procedures. This lack of minimum standards may result in a game operator or third-party game operator having inadequate internal controls. Internal control procedures are purposely designed to prevent fraud and clerical errors that may compromise the operator's financial accounting of all transactions.**
- **The draft regulations do not include a requirement for the Department to audit or ensure the game operator or third party game operator is adhering to its own policies and procedures.**
- **It is unclear as to what happens if the game operator or third-party operator fails to follow its own policies and procedures.**

e. A certificate of bond from the game operator with a bond amount that shall be sufficient to cover any liability resulting from the poker event.

- **This section is unclear as to how liability is to be calculated for a Texas Hold'em poker tournament.**
- **Since there is no requirement for the game operator or third-party operator to file financial statements to identify the amount of its liability, the operator will be able to file its bond with the Department, and in turn, the Department will have to accept it without any idea whether it is sufficient to cover the "liabilities."**
- **The Board may wish to consider the reasons why a game operator or third-party game operator may withdraw from a bond. After doing so, the Board may wish to consider whether these reasons should be reported to the Department. Otherwise, the operator is under no obligation to report issues, such as theft of funds, etc.**

Under Section 11VAC15-40-610 of the Charitable Gaming Regulations, qualified organizations are required to report issues, such as theft of funds, etc., to the Department.

- **Based on this section of the draft regulations, the qualified organization, which is acting as its own game operator, must obtain a bond. This will increase the direct cost of the qualified organization to conduct its own Texas Hold'em poker tournament and it could be seen as a barrier for the qualified organization from conducting the Texas Hold'em poker tournament on its own. As such, it may indirectly encourage qualified organizations to abandon their efforts to conduct their own Texas Hold'em poker tournaments and acquire the use of third-party game operators instead.**

11VAC15-XX-60. Compliance matters.

A. Operations of Games.

1. Participation in Games.

a. Qualified Organizations and third-party game operators can only host, operate or manager poker with the required permit(s), and only with the personnel listed on the applicable permit application.

- **There appears to be a typo with the term “manager.” The Department believes this term should be “manage.”**
- **The Department recommends that the term “conduct” be included within this section. The Law recognizes three levels of involvement with all charitable gaming activities, including Texas Hold'em poker tournaments. Those levels of involvement include (1) management, (2) operation, and (3) conduct. Since the qualified organization or game operator will have individuals who will serve as a dealer, their actions will fall within the legal definition of “conduct.” Therefore, the term “conduct” should be included within this section.**
- **Section 11VAC15-40-10 of the Charitable Gaming Regulations also defines the terms management, operation, and conduct. The Department recommends that the Board define these terms in these draft regulations as well.**
- **This section of the draft regulations uses the term “host.” However, this term is not defined. The Board may wish to define this term to ensure its actual meaning is understood and the responsibilities of the “host” are clear.**

b. Any personnel that are involved in hosting, operating, or managing a poker event including, but not limited to, dealers, managers, charitable host representative, landlord or lessor, or those having an ownership or managerial interest in the qualified organization or the third-party Game

Operator company may not play poker at any time whatsoever. This prohibition exists only at the location such people are hosting, operating, or managing a poker event.

- **“Hosting,” “operating,” and “managing” are not sufficiently defined.**
- **The Department recommends that the term “conduct” be included within this section. The Law recognizes three levels of involvement with all charitable gaming activities, including Texas Hold'em poker tournaments. Those levels of involvement include (1) management, (2) operation, and (3) conduct. Since the qualified organization or game operator will have individuals who will serve as a dealer, their actions will fall within the legal definition of “conduct.” Therefore, the term “conduct” should be included within this section.**
- **“Manager” should be changed to “game manager” for consistency within these draft regulations.**
- **“Managerial interest” is not a clear term and is not defined. The Board should consider defining this term.**

2. Operations of Games.

a. Game operator(s) must hold a game operator's permit;

This is already required under Section 50 of this draft.

b. At all times, a game manager listed in a game operator permit should be present;

- **If this is a requirement, the Department suggests changing “should” to “shall.”**
- **The Department is unclear as to whether the Board is requiring the name of the game manager to be placed on the actual permit. Requiring the names of game managers on a permit could result in numerous permits issued to the same organization.**

c. Badges for charitable host representatives, game manager, dealers, and any other staff must be worn at all times during any poker event. The qualified organization or third-party game operator must provide the badges required herein;

- **The Department suggests the Board include a minimum standard for the badge, including legal name, photo, or other identifying characteristics it deems appropriate. In order to enforce this section, the Department requires authority to request the listed individuals prove their identity. Subdivision 11VAC15-40-50(H) of the Charitable Gaming Regulations states that "all game workers shall have in their possession a photo identification, such as a driver's license or other government-issued identification, and shall make the photo identification available for inspection upon request by a department agent while participating in the management, operation, or conduct of a bingo game."**

- **The Department is unsure to whom “other staff” refers.**

d. If the poker event is conducted by a third-party game operator, then any and all liability arising from or in connection with the poker event shall solely be a liability for the third-party game operator, and no liability arising from or in connection with the poker event, where the poker event is conducted by a third-party game operator, shall be imposed upon the qualified organization;

The Department believes this section of the draft regulations infers that the qualified organization will not have any input into the management, operation, or conduct of the Texas Hold'em poker tournament since the liability is solely on the third-party game operator. Therefore, if there is a violation of these draft regulations, then the Department will obtain compliance solely from the third-party game operator and not the qualified organization for which this gaming activity is being conducted on behalf of and with its permission. This is a shift from the Department's enforcement of the Law and the Charitable Gaming Regulations, as the qualified organization will no longer be accountable for the charitable gaming activity conducted under its name and the accountability will shift to the third-party game operator. Further review is needed, and a determination should be made by the Office of the Attorney General.

e. Any two or more qualified organizations may jointly organize and conduct poker events provided both have fully complied with all other provisions herein. Any two or more 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 poker events and (ii) required to furnish to the department 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.

Section 18.2-340.29 of the Law authorizes a joint permit for bingo only and does not mention of Texas Hold'em poker tournaments. The Department believes it is unlikely that the Board, through these regulations, can authorize a joint permit for Texas Hold'em poker tournaments. Further review is needed, and a determination should be made by the Office of the Attorney General.

f. Both the game manager and charitable host representative must sign off on a daily reconciliation summary.

- **Neither the Law nor the proposed regulation defines “charitable host representative.”**
- **Additionally, the regulation does not appear to establish tasks for the “charitable host representative” to perform during the Texas Hold'em poker tournament other than to sign off on the daily reconciliation summary when the tournament is**

managed, operated, and conducted by a third-party game operator. The term “host representative” is used elsewhere in these draft regulations in lieu of “charitable host representative.” The Board may wish to choose a single term and use it in its draft regulations for consistency.

- The Department believes that subdivision A.2.d. of this section of these draft regulations appear to infer that the organization could have no responsibility for managing the Texas Hold’em poker tournament. It is unclear how the charitable host representative will be able verify the accuracy of the daily reconciliation summary and sign off on it.
- The draft regulations mention that the daily reconciliation summary must be signed within 72 hours. The Board may wish to restate those requirements here as well. Under subdivision 11VAC15-40-80 of the Charitable Gaming Regulations, the game manager must sign all bingo session reconciliation summaries within 48 hours. The Board may wish to adjust the 72 hours to 48 hours in order to maintain consistency.

3. Conduct of Poker Games.

The Law authorizes Texas Hold’em poker tournaments only. The provisions listed below are vague and do not clearly prohibit cash games, live action, or other such games. Further review is needed, and a determination should be made by the Office of the Attorney General.

a. All individuals participating as a player in any poker event must be at least eighteen (18) years-old to play;

b. During the Poker event, Qualified Organizations and third-party Game Operators may award players participating in the event prizes of value, the value of which may be determined by the game manager, under the following conditions, but not limited to:

(1) A player, within a specific period of time as determined by the game manager, wins the highest ranked hand;

(2) A player sitting on the seat randomly determined by the game manager, at a specific period of time as determined by the game manager;

(3) Every player sitting at a single table that is randomly determined by the game manager, at a specific period of time as determined by the game manager;

(4) A player that loses a hand that is the highest losing ranking hand, within a specific period of time as determined by the game manager;

- (5) The last player who remains in the event who participated in the last man standing bet;
- (6) An amount of chips, as determined by the game manager, that are placed into the pot at a randomly selected table by the game manager before the hand begins, before any players place any blinds; or
- (7) Those players who pay an additional fee to receive an additional poker chip for use in the event may be awarded prizes based on how long such player remains in the event, as determined by the game manager.
- c. The game manager (a) shall decide as to how the rules of poker are to be interpreted, applied, and obeyed during the competition and who shall apply the ranking of hands and the rules of the game as governed by the official rules of the Poker Tournament Directors Association and (b) shall apply the code of conduct and etiquette as governed by Robert’s Rules of Poker.
4. Qualified organizations and any third-party game operators must display their current charitable gaming permit that authorizes poker, the national Gambling Hotline phone number, and any house policies adopted by the game manager.
5. Qualified organizations and any third-party game operators must have available the official rules of the Poker Tournament Directors Association and the code of conduct and etiquette from Robert’s Rules of Poker.

The Poker Tournament Directors Association offers a certification program to ensure individuals are well versed in its rules. The Board may wish to consider requiring the game manager or the person responsible for the actual operation of the tournament to obtain this certification. Information on the association’s certification program may be found through the following website: <https://www.pokertda.com/get-poker-tda-certified/>

6. Qualified organizations and any third-party game operators who have been contracted by any qualified organizations to operate as a third-party game operator shall not conduct poker at any facility or on any premises that conducts gaming for profit.

The term “gaming for profit” is vague. The Department is unclear as to the intent of the Board and whether the Board wishes to prohibit a qualified organization or third-party gaming operator from using a facility that operates skilled-based games, sells lottery tickets or other lottery games, or use any of the Advance Deposit Accounting Wagering System authorized by the Virginia Racing Commission. The wagering system is used in many private social quarters of a Moose, Eagles, and Elks. The Board may wish to clarify this section.

7. Qualified organizations and third-party game operators shall ensure the integrity of non-electronic supplies including, but not limited to, poker chips and playing cards.

8. Qualified organizations and third-party game operators shall ensure that the poker chips and cards are not counterfeit or tampered with.

B. Electronic Equipment. Qualified organizations and third-party game operators using any electronic devices for the conduct of poker shall ensure that the devices, including the underlying software, are laboratory tested and approved by the office for verification that such devices or software performs as advertised.

- **The draft regulations require electronic devices for the conduct of Texas Hold'em poker tournaments to be tested by a laboratory, but there are no technical requirements for any of the equipment. Sections 11VAC15-40-160 to 11VAC15-40-410 of the Charitable Gaming Regulations identify the specific technical requirements for electronic pull-tab systems. The Board may wish to establish minimum technical standards to ensure such equipment will facilitate the fair play and maintain the integrity of Texas Hold'em poker tournaments.**
- **The Department is unclear as to whether the Law allows the electronic play of Texas Hold'em poker tournaments. If the Board intends to allow such electronic play of Texas Hold'em poker tournaments and the play of electronic facsimiles of poker cards, then further review is needed and a determination should be made by the Office of the Attorney General.**

C. Game Operator Agreement Requirements.

1. Qualified organizations contracting with a third-party game operator must comply with the following conditions:

a. The qualified organization must enter into a written contract with the third-party game operator (the "Agreement");

The draft regulations states that "copies of any contract, if applicable, with third-party game operator(s)." The Department is unclear as to whether contracts or agreements with third-party game operators are required.

b. The Agreement must include the duration of the contract period and the parties' termination rights;

c. The Agreement shall not permit more than 50% of poker proceeds (net of prizes), which may go to the game operator and any percentage split must be specifically identified in the Agreement;

d. Expenses related to the event shall be negotiated between the qualified organization and the third-party game operator, which shall be specifically identified in the Agreement; and

e. The game operator may not charge or collect any fees or other forms of payment from the qualified organization other than its percentage share referred to in 11VAC15-xx-60.C(1)(c) above, including in exchange for products or services provided to by the game operator to the qualified organization.

D. The audit fee required by §§ 18.2-340.31(B) and 18.2-340.31 (D), shall be paid by the qualified organization to the Treasurer of Virginia but shall be shared equally between the qualified organization and the third-party game operator.

- **Subdivisions 18.2-340.31(B) and 18.2-340.31 (D) of the Law require the qualified organization to pay the fees to the department, essentially placing the burden of these fees solely on the qualified organization.**
- **The Department believes it is unlikely that the Board can mandate another entity, such as the third-party game operator, to share in the burden of paying these fees. No other entity involved with charitable gaming has the burden of paying the qualified organization's fees. If the Board mandates this type of requirement on other businesses, then in the future, the Board may require the charitable gaming supplier or manufacturer to pay a portion of the qualified organization's audit and administration fee.**
- **Further review is needed, and a determination should be made by the Office of the Attorney General.**

E. The qualified organization and the third-party game operator shall provide up-to-date-disclosures if at any time the qualified organization or the third-party game operator discovers that the information provided in accordance with Paragraphs IV., C(1)-(7) above has changed, or is otherwise found to be inaccurate, the qualified organization or game operator, as applicable, shall submit updated or corrected information to the office within three business days of discovering the change or inaccuracy.

F. Record Keeping.

1. Qualified Organizations shall comply with the following recordkeeping requirements for all poker events:

a. Each Qualified Organization shall maintain for three years a complete written record of (a) all charitable gaming sessions using Department prescribed forms or reasonable facsimiles thereof approved by the Office; (b) the name and address of each individual to whom is awarded any charitable gaming prize that meets or exceeds the requirements of Internal Revenue Service Publication 3079, as well as the amount of the award; (c) an itemized record of all receipts and

disbursements, including operating costs and use of proceeds incurred in operating poker events; (d) all operating expenses including rent, advertising, and security and copies of invoices for all such expenses shall also be maintained. The written record requirements herein shall be submitted to the Office each quarter and no later than 60 business days from when the quarter ends. Additionally, Qualified Organizations shall file their annual report containing the information required herein for all four (4) quarters within 60 business days from the year ending.

- **The term “charitable gaming session” applies to other gaming activities. Since these draft regulations will govern Texas Hold’em poker tournaments, the Board may wish to narrow it to the tournament so it does not conflict with the Charitable Gaming Regulations.**
- **This section of the draft regulations establishes different filing dates for financial reports. Unlike the requirements in subdivision 11VAC15-40-90(D) of the Charitable Gaming Regulations, which establishes specific dates to file the financial reports, this section requires that the written records be submitted to the Department no later than 60 business days after the end of the quarter. As an example, under the Charitable Gaming Regulations, the financial report for the first quarter ending on March 31 is due on June 1 of each year. Under this section of the draft regulations, the financial report for Texas Hold’em poker tournament is due on June 23, without adjusting for possible federal/state holidays. Therefore, if a qualified organization conducts both bingo and Texas Hold’em poker tournament, then it will have two financial reports due at two different times for the same reporting period. The Board may wish to align these reporting dates.**

b. The failure to file reports within 60 days of the time such reports are due shall cause the automatic revocation of the permit, and no organization shall conduct any poker event until the report is properly filed and a new permit is obtained. However, the Department may grant an extension of time for filing such reports for a period not to exceed 45 days if requested by an organization, provided the organization requests an extension within 15 days of the time such reports are due and all projected fees are paid. For the term of any such extension, the organization's permit shall not be automatically revoked, such organization may continue to conduct charitable gaming, and no new permit shall be required.

2. The Qualified Organization and the third-party Game Operator shall each maintain independent records.

3. Both the game manager and charitable host representative(s) must sign the game reconciliation form. The game reconciliation form shall contain the following: (i) aggregate cash taken in as game revenue, (ii) aggregate prizes as paid out as disbursements, and (iii) net proceeds to be shared by the Qualified Organization and the third-party Game Operator. The game manager must sign the game reconciliation form at the end of each event and the charitable host representative(s) must sign the game reconciliation form within 72 hours of the conclusion of

each event, both of whom may sign with commercially available electronic document signing software.

The draft regulations allow the use of electronic document signing software to be used when signing the game reconciliation form. Some of the signing software, such as Adobe, does not generate a unique signature of the individual. It is unknown if this will present difficulties for the Commonwealth’s Attorney to criminally prosecute such cases where electronic signatures are used in lieu of original signatures. Additionally, under the Charitable Gaming Regulations, original signatures are required on all bingo and raffle forms. Further review is needed, and a determination should be made by the Office of the Attorney General.

4. The predetermined percentage of gross receipts that shall be used for the Qualified Organization’s purposes for which the organization is specifically chartered or organized shall be at least two and a half percent (2.5%) of gross proceeds.

11VAC15-XX-70. Penalties.

A. Failure to disclose. In the event that any member of a qualified organization, any third-party game operator, or any person(s) with an interest in the real estate where the poker event occurs (or will occur) fails to report an overlapping interest in any of the following -- the poker operations, the location or real estate where the poker event occurs or will occur, the membership in the qualified organization, its board, or any interest in the third-party game operator -- then that person shall have his game operator permit revoked for a period of one (1) year. Reconsideration of the revocation may be presented to the Board, which the Board may reissue at its sole discretion.

- **Although there is a penalty for failure to disclose this information, the draft regulations do not prohibit the actual commingling together or overlapping of interests. This section allows conflict of interest to exist without any prohibition.**
- **The term “board” here will need to be clarified or replaced, as “Board” is already defined in the draft regulations as the “Charitable Gaming Board.”**
- **The draft regulations state “reconsideration of the revocation may be presented to the Board, which the Board may reissue at its sole discretion.” Section 18.2-340.20 of the Law specifically provides the authority to deny, suspend, or revoke a permit to the Department after review and approval by the Board. The Department does not believe that the Board has statutory authority to issue or reissue a permit, as the Law grants this authority to the Department. The Department suggests that further review is needed and that the Office of the Attorney General make a determination as to the Board’s authority related to this requirement.**

B. Any qualified organization that has been found conducting events of poker without a permit may not qualify for a permit at any time in the future, until such time as may be determined by the Board.

- **The Department is unclear as to how the Board will determine the time required before a qualified organization that has been found conducting events of poker without a permit may qualify for a permit. Additionally, the Department is unclear as to the process that it will follow when a qualified organization that conducted an earlier Texas Hold'em poker tournament submits a license application. It is unclear if the Board has authority to determine the issuance of a permit under these conditions. Further review is needed, and a determination should be made by the Office of the Attorney General.**
- **In addition, under the Law, a qualified organization is allowed to conduct charitable gaming, including a Texas Hold'em poker tournament, without a permit so long as its gross receipts are less than \$40,000 during any 12-month period. The Department believes that this section will prevent those qualified organizations from obtaining a permit. Further review is needed, and a determination should be made by the Office of the Attorney General.**

C. Failure of any game operator or third-party game operator to comply with any provisions of these regulations may result in a loss or suspension of their permit(s) for a period of up to one (1) year at the discretion of the Board.

The Department believes “loss” should be replaced with “revocation” to conform to the Law. The Law does not recognize the term “loss.”

D. A standing subcommittee of the Board shall be created comprising of at least three (3) individuals from the Board who shall review and address complaints and make recommendations to the entire Board. The Board shall decide and make all final decisions.

Section 18.2-340.15 of the Law provides the Department with control of charitable gaming in the Commonwealth and the Board with the authority to promulgate regulations.

This provision of the draft regulations appears to be in conflict with the Law, as the Department believes the Board is providing itself authority to investigate complaints, an authority that it is not enumerated in Va. Code § 2.2-2455 and 2.2-2456. The Board is a policy board as defined in § 2.2-2100. As such, the Law must enumerate each power granted to the Board. The Law does not currently provide the Board with the authority to adjudicate.

Section 18.2-340.16 of the Law further enumerates several powers given directly to the Department. These include supervision and jurisdiction of all charitable gaming in the Commonwealth, enforcement of the Law, reporting of violations to the Commonwealth Attorney, auditing of organizations, etc. The Department is unclear as to whether draft regulations would require the Department to submit to the Board before launching an audit or investigation into an organization.

Additionally, the Department believes that it is the Commonwealth's Attorney, and not the Board, that would make the final determination as to any criminal charges. The Department suggests that further review is needed and that the Office of the Attorney General make a determination as to the Board's authority related to this section.