



Virginia
Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Charitable Gaming
Virginia Administrative Code (VAC) citation	11 VAC 15-22
Regulation title	Charitable Gaming Rules and Regulations
Action title	Changes to incorporate recent amendments to the Code of Virginia and update related provisions, including the computation and percentage of gross receipts that are required to be used for charitable purposes by qualified organizations.
Document preparation date	June 15, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The 2003 General Assembly (Chapter 884, 2003 Acts of Assembly) created the Department of Charitable Gaming (the Department) and the Charitable Gaming Board (the Board) to replace the former Charitable Gaming Commission (the Commission). The current Charitable Gaming Rules and Regulations were adopted by the former Commission effective January 1, 1998 and include many references to the Commission, which no longer exists, as well as other statutes that have since been amended. The goals of the amended regulations will be to simplify and clarify the regulations while also making them consistent with current statutes.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 18.2-340.15, *et seq.*, *Code of Virginia* provides that the Department is vested with control of all charitable gaming in the Commonwealth and that the Board shall have the power to prescribe regulations and conditions under which such gaming is authorized. Acts 2003, c.884, cl. 5 provides: "That the Charitable Gaming Board shall examine regulations, including the computation and percentage of gross receipts that are required to be used for charitable purposes by qualified organizations and provide a report to the Governor and the 2004 session of the General Assembly. The report shall include the Board's plans regarding regulatory action on these issues, and anticipated timetable for such action."

The required report, which was submitted on December 2, 2003, concluded: "The Board concurs that a comprehensive revision to the Charitable Gaming Rules and Regulations and the Supplier Rules and Regulations is needed..." The Board reported an anticipated timetable for the process to amend the regulations as approximately 18 months to complete, occurring between June 2004 and January 2006. Based in part on this report, the 2004 General Assembly extended a moratorium in the *Code* that requires that the Department shall not revoke the charitable gaming permit of any qualified organization based solely on failure to meet the required percentage of gross receipts used for charitable purposes until such time as the Board adopts amended regulations (Chapter 213, 2004 Acts of Assembly).

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Under the *Code of Virginia* prior to 2003, the Commission had the dual role of establishing charitable gaming regulations as well as enforcing them. Effective July 1, 2003, the role of the Commission to establish regulations was replaced by the Board while the role of the Commission to enforce the statutes and regulations was relegated to the Department. The existing regulations reference the former Commission a total of 55 times. Each reference will be amended according to whether the context is now the duty of the Board or the Department.

The existing regulations establish a graduated percentage of gross gaming sales based on the size of the gaming operation that each qualified organization must use for charitable purposes. The regulations further specify a complicated list of sanctions that shall be imposed for failure to meet the required use of proceeds. Studies completed by the Department and presented to the Board regarding the use of proceeds for Fiscal Years 2002 and 2003 revealed that 30% of qualified organizations did not meet the requirements of the existing regulations. The studies further reported that there was no data to support the graduated percentage based on the size of the gaming operation. The Board is seeking to develop a more equitable method for determining the appropriate use of proceeds requirement and also to provide the Department more flexibility and discretion in applying sanctions to organizations that do not meet the requirements.

The existing regulations provide specific guidance regarding electronic gaming devices. However, the regulations have not kept up with emerging technologies. The Board will be seeking to develop regulations that recognize the ever changing nature of electronic devices and allow the Department the flexibility to better keep up with new technology.

The Board held a series of four open forums in the fall of 2003 and nine focus groups in the spring of 2004 around the state to discuss the existing regulations with the regulated community. One common concern that has been expressed by qualified organization is that the existing regulations in many cases are not clear, concise or understandable. It is the goal of the Board to amend the regulations to include

clearer definitions, more concise language and overall to make the regulations simpler and more understandable.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Because of the fact that statutory changes have made the existing regulations obsolete, no other alternatives were considered.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is anticipated that the proposed regulatory action will have no impact on the institution of the family and family stability.

Commenter	Comment	Agency response

Enter statement here