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Exempt Action: Proposed Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 20-20
VAC Chapter title(s)	Charitable Gaming Regulations
Action title	Promulgation of Charitable Gaming Regulations by Department of Agriculture and Consumer Services, including electronic gaming provisions
Date this document prepared	September 15, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed regulatory action seeks to promulgate regulations for the conduct of charitable gaming in the Commonwealth. Chapters 554 and 609 of the 2022 Acts of Assembly authorize the Commissioner of the Department of Agriculture and Consumer Services (VDACS) to prescribe regulations and conditions under which charitable gaming shall be conducted in the Commonwealth. Previously, the authority to adopt regulations regarding the conduct of charitable gaming rested with the Charitable Gaming Board (Board).

The proposed regulation consists of the regulatory provisions established in 11 VAC 15-40 by the Board and the provisions regarding electronic gaming that are outlined below.

The proposed regulation establishes that 40 percent of an organization's electronic gaming adjusted gross receipts must be used for the organization's charitable purpose. The regulation maintains the

requirement currently established in 11 VAC 15-40 that 10 percent of an organization’s gross receipts from all other charitable gaming must be used for the organization’s charitable purpose.

The regulation establishes provisions with which social organizations must comply to obtain and maintain authorization from VDACS to conduct electronic gaming, including (i) required documents that must be provided to VDACS, (ii) prohibited acts, and (iii) recordkeeping and bank account requirements. The regulation also establishes the process by which VDACS will suspend, revoke, or reinstate authorizations to conduct electronic gaming. The regulation establishes a fee of \$200 to obtain an authorization to conduct electronic gaming in addition to the required charitable gaming permit fee. A qualified organization that leases from a social organization to conduct electronic gaming must obtain a charitable gaming permit prior to conducting electronic gaming.

The regulation prescribes the conditions under which a social organization may lease its premises to a qualified organization to conduct electronic gaming, including required documentation and requirements for the lease agreement between the social organization and qualified organization that intends to lease the social organization’s premises to conduct charitable gaming. The lease agreement must be provided to VDACS for review.

The regulation provides that salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of the organization's members do not qualify as a reasonable and proper business expense.

In accordance with Va. Code § 18.2-340.31, the regulation establishes the audit and administration fee at one-half of one percent of an organization’s electronic gaming adjust gross receipts. This fee is in addition to the fee of one-quarter of one percent required by Va. Code § 18.2-340.31(D).

The regulation establishes a late fee to be assessed on an electronic gaming manufacturer that fails to submit required reports.

Mandate and Impetus

Identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapters 554 and 609 of the 2022 Acts of Assembly authorize the Commissioner of the Department of Agriculture and Consumer Services (VDACS) to prescribe regulations and conditions under which charitable gaming shall be conducted in the Commonwealth. Previously, the authority to adopt regulations regarding the conduct of charitable gaming rested with the Board.

Chapters 722 and 767 of the 2022 Acts of Assembly required VDACS to promulgate regulations regarding (i) the authorization of electronic gaming by social organizations, (ii) the conditions under which a social organization may lease their premises to a qualified organization for the purpose of conducting electronic gaming, (iii) the predetermined percentage of adjusted gross receipts from electronic gaming that each organization must use in support of its charitable purpose, (iv) a schedule of late fees for electronic gaming manufacturers that fail to submit required reports timely. Chapters 722 and 767 also include an enactment clause that exempt the initial adoption of these regulations from the Administrative Process Act, except that there shall be an opportunity for public comment.