

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL21-2563-4
(CLERK'S OFFICE USE ONLY)

Richmond

Circuit Court

Cheers

v./In re: Department of Agricultural & Consumer Services, et al.

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
- Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
 - Vehicle Confiscation
 - Voting Rights - Restoration
- Other (please specify)

Due Process Violation

Damages in the amount of \$ are claimed.

06/01/2021

DATE

J. Chapman Petersen

PRINT NAME

3970 Chain Bridge Road, Fairfax, VA 22030

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

571-459-2510

jcp@petersenfirm.com; cc: ik@petersenfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

***"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

RICHMOND CIRCUIT COURT

RECEIVED AND FILED
RICHMOND CIRCUIT COURT
JUN 02 2021
EDWARD F. JEWETT, CLERK
BY

CHEERS

Plaintiff,

v.

**DEPARTMENT OF AGRICULTURAL &
CONSUMER SERVICES**

Serve: Bettina Ring, Secretary of Virginia
Department of Agricultural and Commercial
Services – 102 Governor Street
Richmond, Virginia 23219

**MICHAEL MENEFEE, in his capacity as
Program Manager, Charitable and
Regulatory Programs**

Serve: 102 Governor Street
Richmond, Virginia 23219

**JOEL MADDUX, in his capacity as Deputy
Director, Division of Consumer Protection**

Serve: 102 Governor Street
Richmond, Virginia 23219

**LARRY NICHOLS, in his capacity as the
Division Director, Division of Consumer
Protection**

Serve: 102 Governor Street
Richmond, Virginia 23219

Defendants.

Case No.:

CL21-2563-4

COMPLAINT AND PETITION FOR APPEAL

COMES NOW the Plaintiff, Cheers (“Cheers”), by counsel, and hereby states the following in support of their Complaint against the Defendants Virginia Department of Agricultural and Consumer Services (the “Department”), Michael Menefee (“Menefee”), in his capacity as the Department’s Program Manager for the Charitable and Regulatory Programs, Joel Maddux

(“Maddux”), in his capacity as the Department’s Deputy Director, Division of Consumer Protection, and Larry Nichols (“Nichols”), in his capacity as Division Director, Division of Consumer Protection (collectively, “Defendants”):

Background

This matter arises from the passage of Senate Bill 936 (“SB 936”), signed without amendment by Governor Northam on April 9, 2020, which, *inter alia*, permitted “qualified organizations”—like Cheers here—“to conduct raffles, bingo, network bingo, instant bingo games, and Texas Hold’em poker tournaments.” Va. Code § 18.2-340.22. Additionally, SB936 directed the Department’s Charitable and Gaming Board (the “Board”), rather than the Department itself, to “*promulgate regulations establishing circumstances under which [qualified] organizations [] ... may conduct Texas Hold’em poker tournaments.*” *Id.* § 18.2-340.28:2.¹

After thirteen (13) public meetings in summer and fall 2020, which were posted on Virginia’s Town Hall, and offered multiple opportunities for public comment, the Board formally approved on December 31, 2020, the regulations (the “Regulations”) for conducting, managing, and operating Texas Hold’em poker tournaments by an 8-0 vote. Thereafter, on January 4, 2021, the Board emailed the enacted Regulations to the Department and the Virginia Register of Regulations, so that they could be listed in the Virginia Register of Regulations, effective immediately. Notably, the Regulations were intended to be exempt from ordinary protocols of Virginia’s Administrative Process Act (“the APA”), § 2.2-4002 *et seq.* SB936 at 4.

¹ The legislature also exempted criminal liability for any Texas Hold’em poker tournaments conducted solely by qualified organizations (as defined in Va. Code § 18.2-340.16), which have already received a permit to conduct charitable gaming as set forth in § 18.2-340.25. *See* Va. Code § 18.2-334.2.

Pursuant to the adopted Regulations, on February 2, 2021, Cheers, an existing charity which conducts Bingo and other games, filed a completed application for an amended Charitable Gaming Permit so that it could amend its existing permit to also conduct Texas Hold'em poker tournaments (the "Amended Permit Filing"). At the time of filing, Cheers was in compliance with all relevant laws, including the Regulations. The Amended Permit Filing was not acted upon within forty-five (45) days by Menefee, as required by Virginia Code § 18.2-304.25.

On April 12, 2021, the Regulations were published on the Virginia Register of Regulations (the "Register"), which apparently made the Regulations "effective" as of March 23, 2021, notwithstanding the Board's adoption on December 31, 2020, and forwarding on January 4, 2021. Instead, the "effective" date applied by the Department appears entirely arbitrary.

Prior to the publishing of the Regulations on the Register, the General Assembly, through a conference committee vote, passed a Budget Amendment (Item 105, #1c) on the last day of the 2021 Special Session (February 27, 2021), which stated that: "All regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021 shall remain in force and no additional regulations shall be promulgated ... prior to June 31, 2022." (the "2021 Budget Amendment").

On April 27, 2021, Cheers, through counsel, sent a letter to Defendant Menefee requesting that the Department act upon Cheers' Amended Permit Filing from February 2, 2021, as required by Virginia Code § 18.2-304.25.² On May 10, 2021, Menefee, on behalf of the Department, denied

² In an attempt to further investigate the underlying issues, Virginia Charitable Bingo Association, through undersigned counsel, on April 19, 2021, issued a Freedom of Information Act ("FOIA") request to Defendant Maddux. No proper response was received from Maddux, notwithstanding that the Virginia Code requires state actors like Maddux to act within five (5) days of the FOIA request. *See* Va. Code § 2.2-3704(B). Maddux then failed to also respond to a follow-up letter requesting compliance with Virginia's FOIA. Apparently, the FOIA was in Maddux's spam filter. Undersigned counsel is attempting to work with the Department to resolve the FOIA issues.

Cheers' Amended Permit Filing citing the 2021 Budget Amendment. The denial occurred without notice or hearing, thereby depriving Cheers of its procedural and due process rights.

This action seeks to request the following relief:

- i. Pursuant to a declaratory count, a declaration that “qualified organizations” currently permitted under § 18.2-340.25 (*i.e.*, those who meet the requirements of § 18.2-340.24) be permitted to conduct Texas Hold'em poker tournaments, as permitted by SB936, under their current charitable gaming permit;
- ii. An order stating that Cheers' procedural and substantive due process rights were violated by the Department; and
- iii. An order stating that the Department, by its actions herein, has nullified the Regulations and the underlying law in violation of state law and that its case decision was wrong as a matter of law.

Parties and Jurisdiction

1. Cheers is a Virginia non-stock corporation and a tax-exempt organization under section 501(c) of the Internal Revenue Code with its principal place of business located at 210 Giant Drive, Richmond, Virginia 23224.

2. The Department is an agency of the Commonwealth of Virginia that promotes the economic growth and development of Virginia agriculture, provides consumer protection, and encourages environmental stewardship.

3. The Department is headquartered in Richmond and has several field offices, four regional diagnostic animal health laboratories and a global network of representatives promoting Virginia products internationally.

4. The Department is divided into five (5) units. At issue here are the actions of the Division of Consumer Protection (the “Division”), which employs the individual Defendants, all of whom have acted through the authority vested in them by the Department.

5. Defendant Maddux is the Deputy Director of the Division.

6. Defendant Nichols is the Division Director of the Division.

7. Defendant Menefee is the Program Manager for the Charitable and Regulatory Programs under the Division.

8. Individual defendants Maddux, Nichols, and Menefee have been intimately involved with the underlying issues and facts.

9. The Department and the individual defendants, in their official capacities on behalf of the Department, have harmed Cheers, as fully detailed *infra*.

10. Venue is proper pursuant to Va. Code § 8.01-261.

11. Jurisdiction is proper pursuant to Va. Code §§ 8.01-328.1, 2.2-3713, 8.01-195.4.

Statement of Facts

I. SB936 Permits Qualified Organizations to Conduct Texas Hold'em Poker Tournaments and Grants the *Board* Authority to Regulate.

A. The Requirements for a Charitable Gaming Permit:

12. As passed by the Virginia General Assembly on a unanimous vote and approved by the Governor, SB936 amended Virginia Code §§ 18.2-334.2, 18.2-340.16, 18.2-340.19, 18.2-340.22, and 18.2-340.31, attached hereto as Exhibit A, to permit, *inter alia*, qualified organizations to conduct Texas Hold'em poker tournaments.

13. A “charitable game” includes “raffles, Texas Hold'em poker tournaments, and games of chance...” *See* Exh. A at 1; *see also* Va. Code § 18.2-340.16 (definition of “Charitable gaming” or “charitable games”).

14. “Texas Hold'em poker tournament” means:

an organized competition of players (i) who pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition; (ii) who may be allowed to pay an additional fee, during set preannounced times of the competition, to receive additional poker chips for use in the competition; (iii) who may be

seated at one or more tables simultaneously playing Texas Hold'em poker games; (iv) who upon running out of poker chips are eliminated from the competition; and (v) a pre-set number of whom are awarded prizes of value according to how long such players remain in the competition.

Va. Code § 18.2-340.16; *see also* Exh. A at 2.

15. The issuing of permits to play charitable games is anticipated by statute. *See* Va. Code § 18.2-340.25(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 Department.”).

16. To obtain a permit to conduct “charitable gaming” an organization shall: (1) been an existence for at least three (3) years immediately prior to applying for a permit; (2) be operating currently and always been operated as a nonprofit organization, and (3) have at least 50% of its membership consist of residents of the Commonwealth. *See* Va. Code § 18.2-340.24(A)(1)-(3).

B. Grant of Regulatory Power to the Board:

17. SB936 directed the Board to “*promulgate regulations establishing circumstances under which [qualified] organizations [] ... may conduct Texas Hold'em poker tournaments.*” Exh. A at 2; Va. Code § 18.2-340.28:2.

18. As it pertained to “Regulations of the [Charitable Gaming] Board[,]” SB936 included the following text: “In the case of the conduct of Texas Hold'em poker tournaments, the regulations shall provide that the predetermined percentage of gross receipts may be used for expenses related to compensating operators contracted by the qualified organization to administer such events.” Exh. A at 3; Va. Code § 18.2-340.19.

19. That same section included that the Board shall “prescribe the conditions under which a qualified organization may manage, operate or contract with operators of, or conduct Texas Hold'em poker tournaments.” Exh. A at 3; Va. Code § 18.2-340.19(12).

20. In essence, SB936 directed the Board to adapt regulations for the new game, *i.e.*, by requiring that the Board “shall” prescribe conditions under which qualified organizations can conduct Texas Hold’em poker tournaments.

C. Qualified Organizations Permitted to Conduct Texas Hold’em Poker Tournaments Under Certain Conditions:

21. Notwithstanding the directions to the Board to promulgate regulations, SB936 through its own text already regulates the “conduct” of Texas Hold’em poker tournaments for qualified organizations. *See* Exh. A at 4; *see also* Va. Code § 18.2-340.28.2.

22. To begin, SB936, as an exception to the Commonwealth’s general ban on gambling, “permits qualified organizations to conduct raffles, bingo, network bingo, instant bingo games, and Texas Hold’em poker tournaments.” Exh. A at 1, § 18.2-340.22 (emphasis added).

23. SB936 also defines the class of qualified organizations,³ *i.e.* those qualified to conduct bingo games **on or after July 1, 2019**, which could conduct Texas Hold’em poker tournaments. *See* Exh. A at 4; Va. Code § 18.2-340.28:2(A) (“Any organization qualified to conduct bingo games on or after July 1, 2019, may conduct Texas Hold’em poker tournaments.”).

24. This expansion of charitable gaming authority was limited, as only one form of poker was approved—*i.e.*, Texas Hold’em poker tournaments. Exh. A at 3-4; Va. Code § 18.2-340.22(A) (“Nothing herein shall be construed to authorize the Board to approve the conduct of any other form of poker in the Commonwealth.”).

³ “Qualified organization” “means any organization to which a valid permit has been issued by the Department to conduct charitable gaming—*i.e.*, like Cheers—or any organization that is exempt pursuant to § 18.2-340.23” Va. Code § 18.2-340.16.

25. Conversely, “[a]ll games not explicitly authorized by this article or Board regulations adopted in accordance with § 18.2-340.18 are prohibited.” Exh. A at 3; Va. Code § 18.2-340.22(A).

26. SB936 additionally permits qualified organizations to contract with an operator to administer Texas Hold’em poker tournaments. *See* Exh. A at 4; Va. Code § 18.2-340.28:2(B) (“A qualified organization may contract with an operator to administer Texas Hold’em poker tournaments.”).

27. SB936 establishes and limits the financial currencies and instruments that a qualified organization may accept for Texas Hold’em poker tournaments. *See* Exh. A at 4; Va. Code § 18.2-340.28:2(C) (“A qualified organization shall accept only cash or, at its option, checks in payment of any charges or assessments for players to participate in Texas Hold’em poker tournaments. However, no organization shall accept postdated checks in payment of any charges or assessments for players to participate in Texas Hold’em poker tournaments.”).

28. SB936 also prohibits extension and acceptance of other forms of credit or electronic fund transfers that a qualified organization can accept for Texas Hold’em poker tournaments. *See* Exh. A at 4; Va. Code § 18.2-340.28:2(D) (“No qualified organization or any other person on the premises shall extend lines of credit or accept any credit card or debit card or other electronic fund transfer in payment of any charges or assessments for players to participate in Texas Hold’em poker tournaments.”).

29. SB936 also prohibits qualified organizations from allowing anyone below the age of eighteen (18) to participate in Texas Hold’em poker tournaments. Exh. A at 4; Va. Code § 18.2-340.28:2(E).

30. SB936 also increased the audit and administration fee by imposing an additional fee of one-quarter of one percent of the gross receipts that an organization reports pursuant to § 18.2-340.30. Exh. A at 4; Va. Code § 18.2-340.31.

31. In short, the plain language of SB 936 (i) authorized qualified organizations, those able to conduct bingo on or after July 1, 2019, to also conduct Texas Hold'em poker tournaments and (ii) established a set of guardrails to regulate the new charitable game, with or without the enactment of the anticipated regulations.

D. Regulations Are Drafted Through Public Process & Approved by Board; Department Begins to Collect Additional Fee

32. In the spring of 2020, the Board began work on the Regulations when it authorized public gatherings after July 1st to solicit input from potential operators, interested charities and the public. The Department was also invited to participate.

33. After thirteen (13) public meetings in the summer and fall of 2020, which were posted on Virginia's Town Hall and provided multiple opportunities for public comment, the Board formally approved the Regulations for conducting, managing, and operating Texas Hold'em poker tournaments on December 31, 2020, by an 8-0 vote.

34. Throughout the process, the Department failed to cooperate with the effort to establish the new charitable game. It failed to provide staff for Board meetings (as required by statute), refused to participate in the public workgroups, posted a set of its own draft regulations on the Virginia Register on November 9, 2020 (without legal authorization), and then failed to timely file the Regulations approved by the Board with the Registrar.

35. Notwithstanding that lack of cooperation, the Department on July 1, 2020 began collecting the extra fee authorized by SB 936, which authorized participating organizations under § 18.2-340.30 to pay an additional 0.25% surcharge for administrative expenses.

36. On January 4, 2021, after approving the Regulations unanimously, the Board emailed the Department the approved Regulations in final format so that they could be formally listed on the Virginia Register of Regulations.

37. As stated *infra*, the Regulations were exempt from the Virginia’s Administrative Process Act, § 2.2-4002 *et seq.* (the APA). Exh. A at 4, § 2. Therefore, there was no reason for them to not take effect immediately.

E. The Assembly Enacts 2021 Budget Amendment, then the Regulations are Published on the Virginia Register of Regulations Thereafter, with Effective Date March 23, 2021.

38. During the 2021 General Assembly Special Session, a Budget Amendment, namely Item 105, #1c, was approved on the last day of the session (February 28, 2021) without any public notice or debate.⁴ The text is attached hereto as Exhibit B, which states that: “All regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021 shall remain in force and no additional regulations shall be promulgated ... prior to June 31, 2022.” Exh. B at 1 (“2021 Budget Amendment” as defined *supra*).

39. On April 12, 2021, fourteen weeks after the Regulations were approved by the Board, the Department, through Menefee, published the Regulations on the Virginia Register of Regulations, attached hereto as Exhibit C (the “Published Regulations”).

40. According to the Department, the Published Regulations—as passed on December 31, 2020—were declared “effective” as of March 23, 2021. Exh. C at 1.

⁴ No bill was filed or debated to “roll back” or amend the provisions of SB 936. Nor was that an item of public discussion during the 2021 General Assembly session.

41. Significantly, the effective date was decided by the Department after the passage of the 2021 Budget Amendment. The effective date was inserted by the Department and/or Menefee, without any consent or approval of the Board.⁵

42. As intended by the Department, given the 2021 Budget Amendment and the “effective” dating of the Published Regulations, the Regulations were *de facto* voided.

II. Cheers Applies for Amended Permit Filing After the Board’s Approval of Regulations:

43. Pursuant to the Regulations, on February 2, 2021, Cheers filed a completed application for an amended Charitable Gaming Permit so that it could add to its existing permit its intent to also conduct Texas Hold’em poker tournaments (the “Amended Permit Filing”).

44. At the time of filing, Cheers was in compliance with all relevant state or local laws, including the Regulations.

45. The Department and the individual defendants failed to act on Cheers’ Amended Permit Filing within forty-five (45) days, as required by Virginia Code § 18.2-304.25.

46. Given the lack of response, on April 27, 2021, undersigned counsel sent Menefee a letter requesting the Department’s compliance with Virginia Code § 18.2-304.25. The letter is attached hereto as Exhibit D.

47. In response, Menefee, on May 10, 2021, on behalf of the Department, denied Cheers’ Amended Permit Filing. The denial is attached hereto as Exhibit E (the “Denial”).

III. Cheers is Denied All Rights Under Law:

⁵ Pursuant to § § 1VAC7-10-100, the Agency has the discretion to decide the effective date.

48. Upon information and belief, the Denial was based on advice the Department received from its counsel, presumably the Virginia Attorney General's Office, on the effect of 2021 Budget Amendment to the Regulations.

49. In short, Menefee's basis of the Denial was that the 2021 Budget Amendment nullifies the Published Regulations given their "effective" date.

50. Under Virginia Code § 18.2-340.20, the Denial of the permit is an administrative decision subject to the APA, § 2.2-4000 *et seq.* See Va. Code § 18.2-340.20(A).

51. Further, "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." Va. Code § 18.2-340.20(B).

52. "At the discretion of the Department, hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court." *Id.*

53. "After a hearing on the issues, the Department 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 Board." *Id.*

54. Here, no hearing date or fact-finding inquiry occurred before a neutral decision-maker, nor was there a notice for any such hearing or fact-finding inquiry. That failure is a violation of Cheers' due process rights and directly in violation of Va. Code Section 18.2-340.20.

Count I – Declaratory Judgment

55. Cheers incorporates by reference every allegation set forth above as if fully alleged herein.

56. On May 10, 2021, Menefee, on behalf of the Department, denied Cheers' Amended Permit Filing for conducting Texas Hold'em poker tournaments.

57. On May 11, 2021, during a meeting of the Board, Justin Bell, Esq., attorney for the Office of the Attorney General, opined that qualified organizations are essentially in "limbo" as it pertains to Texas Hold'em poker tournaments given the 2021 Budget Amendment.

58. Further, on May 11, 2021, during the same Board meeting, Justin Bell, Esq., opined that the only resolution for qualified organizations to conduct Texas Hold'em poker tournaments is to hope the General Assembly either revoke or modify the language in the 2021 Budget Amendment – e.g., during a Special Session -- such that the Regulations become effective.

59. There is no legal basis for the proposition that a Budget Amendment "freezing" regulations can be used to retroactively nullify an enacted state law

60. In essence, with no legal authority, the Office for the Attorney General and the Department have denied Cheers, among all other qualified organizations licensed to conduct bingo, the right to conduct Texas Hold'em poker tournaments, in contravention to the plain text of SB936.

61. While Cheers can engage in conducting Texas Hold'em Poker tournaments based on the plain language of SB936, the Department would theoretically have the right to suspend or revoke Cheers' current charitable gaming permit if it is not found to be in strict compliance with the provisions of charitable gaming. *See* Va. Code § 182.340.20(A).

62. Pursuant to Va. Code § 8.01-184, this Honorable Court has the power to issue declaratory judgments in cases of actual controversy, such as this, as it involves the ongoing denial of Cheers' rights under SB936, a legal statute in full force and effect, by the Department (and its counsel, the Office of the Attorney General).

63. Pursuant to Va. Code § 8.01-184, Cheers' request that the Court declare the following:

- i. Qualified organizations, like Cheers, may manage, operate, or conduct Texas Hold'em poker tournaments pursuant to state law, without the need for a further license from the Department, within the limitations imposed by that law. *See* § 18.2-340.28:2(A)-(E);
- ii. Qualified organizations may contract with Texas Hold'em poker tournaments operators for the conduct of such poker tournaments pursuant to SB936; and
- iii. Qualified organizations may contract with other third-parties including, but not limited to, vendors selling relevant items to fully effectuate the qualified organizations' ability to manage, operate, or conduct Texas Hold'em poker tournaments.

Count II – Violation of Procedural Due Process

64. Cheers incorporates by reference every allegation set forth above.

65. Revocation, suspension, or denial of state issued licenses involve state action that adjudicates important interests of the licensee.

66. In such cases the licenses are not to be taken away or denied without procedural due process as required by the Fourteenth Amendment of the Constitution of the United States. *See Mall Amusements, LLC v. Va. Dep't of Alcoholic Beverage Control*, 66 Va. App. 605, 613, 790 S.E.2d 245, 249 (2016) (quoting *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971)); *see also Va. Bd. of Med. v. Haggmann*, 67 Va. App. 488, 501, 797 S.E.2d 422, 428 (2017).

67. Further, Article 1, Section 11 of the Virginia Constitution states that "no person shall be deprived of his life, liberty, or property without due process of law." Va. Const., Art. I, § 11.

68. Constitutional guarantees of procedural due process provide certain "minimum requirements" that "must attend administrative hearings." *Hladys v. Commonwealth*, 235 Va. 145,

147, 366 S.E.2d 98, 99, 4 Va. Law Rep. 2083 (1988) (citing *Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)).

69. “A day in court, an opportunity to be heard, is an integral part of due process of law.” *Venable v. Venable*, 2 Va. App. 178, 181, 342 S.E.2d 646, 648 (1986) (quoting *Moore v. Smith*, 177 Va. 621, 626, 15 S.E.2d 48, 49 (1941)).

70. These guarantees include “timely and adequate notice, the right to present evidence and confront adverse witnesses, the right to assistance of retained counsel, and . . . the right to an impartial decision maker.” *Mall Amusements*, 66 Va. App. at 613, 790 S.E.2d at 249.

71. Virginia law, like constitutional procedural due process, entitles a respondent in an administrative hearing to “an impartial decision-maker.” *Hladys*, 235 Va. at 147, 366 S.E.2d at 99; see Code § 54.1-110 (providing a mechanism for disqualifying a hearing officer or panel member in a hearing conducted by a board overseeing a profession or occupation).

72. Due process includes the right of a respondent in an administrative proceeding to be present at a hearing and to confront his accusers. See, e.g., *Hladys*, 235 Va. at 147, 366 S.E.2d at 99

73. On May 10, 2021, Menefee, on behalf of the Department, denied Cheers’ Amended Permit Filing for conducting Texas Hold’em poker tournaments.

74. Menefee is not a neutral decision maker as he was not selected from a list prepared by the Executive Secretary of the Supreme Court. See Va. Code § 2.2-4024.

75. No hearing or fact-finding inquiry occurred before a neutral decision-maker, nor was there a notice for any such hearing or fact-finding inquiry.

76. The Denial amounted to a deprivation of Cheers’ procedural due process rights.

77. Cheers has been damaged for an amount to be determined at a trial in this matter.

78. If the Court finds in favor of Cheers for a violation of its due process rights, Cheers requests that the Court award Cheers a refund of the additional one-quarter of one percent fee that it paid from July 1, 2021, to date and its reasonable attorney fees pursuant to applicable state and Federal law.

Count III – Violation of Substantive Due Process

79. Cheers incorporates by reference every allegation set forth above.

80. Cheers has a property interest pursuant to its charitable gaming license.

81. Cheers sought to conduct Texas Hold'em poker tournaments pursuant to the Amended Permit Filing.

82. Based on the Denial of same, Cheers has effectively been denied the right to manage, operate, or conduct Texas Hold'em poker tournaments, notwithstanding its right to do so under its current charitable gaming license under Virginia statute, SB936.

83. The Department in denying Cheers (and all other qualified organizations) the ability to manage, operate, or conduct Texas Hold'em poker tournaments, notwithstanding its right to do so under its current charitable gaming license under state law has deprived Cheers of its property interest in its current charitable gaming license.

84. The Denial has diminished the value in Cheers' property interest and damaged Cheers substantially, who has been vocal to the public about its desire and plan to begin managing, operating, or conducting Texas Hold'em poker tournaments based on SB936.

85. Cheers' has a vested right or a "claim of entitlement" to manage, operate, or conduct Texas Hold'em poker tournaments given existing state law and to do so without any further license or amended charitable gaming license, light of the 2021 Budget Amendment nullifying the Regulations.

86. Property rights and interests can be created by state law, like here. *Board of Regents v. Roth*, 408 U.S. 564, 561, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

87. Cheers, as a “qualified organization” has more than an abstract need or desire to be able to manage, operate, or conduct Texas Hold’em poker tournaments—*i.e.*, as a qualified organization, under SB936, it has a legitimate claim or entitlement to manage, operate, or conduct Texas Hold’em poker tournaments.

88. Cheers’ right to manage, operate, or conduct Texas Hold’em poker tournaments without denial rises to a level of constitutionally protected property interest given that there is no right by the Department to deny the same given that the Regulations are ineffective.

89. The Department has denied Cheers’ substantive due process rights, in addition to its procedural due process rights, as fully alleged *supra*.

90. Cheers has been damaged for an amount to be determined at a trial in this matter.

91. If the Court finds in favor of Cheers for a violation of its due process rights, Cheers requests that the Court award Cheers a refund of the additional one-quarter of one percent fee that it paid from July 1, 2021, to date and its reasonable attorney fees pursuant to applicable state and Federal law.

Count IV – Judicial Review of Unlawful De Facto Regulation and Unlawful Case Decision

92. Cheers incorporates by reference every allegation set forth above.

93. “Case” or “case decision” means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

94. Under Virginia Code § 18.2-340.20, the Denial is subject to the APA, § 2.2-4000 *et seq.* See Va. Code § 18.2-340.20(A), even if the regulations themselves were not.

95. As such, the Denial was a “case decision” under the APA, § 2.2-4018 *et seq.*

96. Further, “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.” Va. Code § 18.2-340.20(B).

97. “At the discretion of the Department, hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court.” *Id.*

98. “After a hearing on the issues, the Department 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 Board.” *Id.*

99. However, there was no informal fact finding proceeding or formal hearing.

100. A formal hearing was required under § 2.2-4020 given that Va. Code § 18.2-340.20(B) expressly provided for such decisions to be made upon or after hearing.

101. Such parties are to be given reasonable notice of the hearing, the agency’s basic laws, matters of fact and law asserted or questioned by the agency, and relevant contact information of a agency designee. Va. Code § 2.2-4020(B).

102. Notwithstanding the Department and the Attorney General’s Office position that the Regulations are ineffective and, therefore, qualified organizations are in “limbo,” the Department has now applied a *de facto* regulation, in contravention to SB936’s mandate that qualified organizations may manage, operate, or conduct Texas Hold’em poker tournaments.

103. The *de facto* regulation is that qualified organizations must still obtain a license from the Department to manage, operate, or conduct Texas Hold'em poker tournaments, notwithstanding the 2021 Budget Amendment nullifying the Regulations.

104. The *de facto* regulation was essentially anticipated in the Regulations but has been nullified by the 2021 Budget Amendment.

105. Notwithstanding, the Department continues to apply the *de facto* regulation.

106. Cheers is affected by the unlawful *de facto* regulation at issue given that the Department has effectively denied its rights to manage, operate, or conduct Texas Hold'em poker tournaments, as permitted by SB936.

107. Further, Cheers is affected by the unlawful case decision made—*i.e.*, the Denial—made by the Department on Cheers' Amended Permit Filing.

108. Pursuant to Va. Code § 2.2-4026, this Honorable Court has a right to directly review the unlawful *de facto* regulation and the unlawful case decision.

109. Cheers is entitled to its attorney's fees pursuant to § 2.2-4030.

WHEREFORE, in light of the foregoing, Cheers' request the following relief:

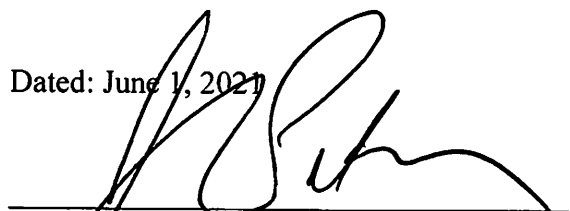
- Count I: Pursuant to Va. Code § 8.01-184, Cheers' request that the Court declare the following:
 - i. Qualified organizations, like Cheers, may manage, operate, or conduct Texas Hold'em poker tournaments pursuant to Virginia law, without the need for a further license from the Department, within the limitations imposed by that law. § 18.2-340.28:2(A)-(E);
 - ii. Qualified organizations may contract with Texas Hold'em poker tournaments operators for the conduct of such poker tournaments pursuant to SB936; and
 - iii. Qualified organizations may contract with other third-parties including, but not limited to, Texas Hold'em poker tournament equipment providers to

fully effectuate qualified organizations' ability to manage, operate, or conduct Texas Hold'em poker tournaments.

- Count II-III: Order that the Denial amounted to a deprivation of Cheers' procedural and substantive due process rights, award Cheers a refund of the additional one-quarter of one percent fee that it paid from July 1, 2021, to date, and award Cheers its reasonable attorneys' fees;
- Count IV: Order that the Department applied an unlawful de facto regulation, that the case decision was unlawful, and award Cheers its reasonable attorneys' fees pursuant to § 2.2-4030 and applicable law; and
- For any other relief the Court deems as necessary, appropriate, or just including, but not limited to, attorneys' fees.

Dated: June 1, 2021

CHEERS
By Counsel,

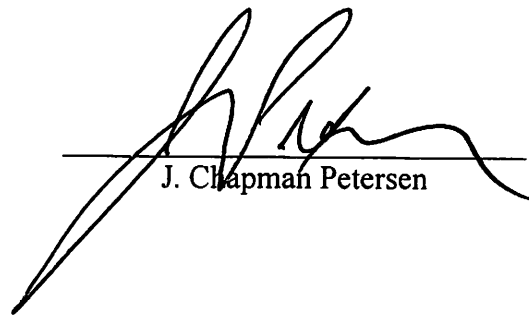


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Counsel for Plaintiff

CERTIFICATE OF SERVICE ON COMMONWEALTH

I hereby certify, pursuant to § 8.01-195.6 of the Code of Virginia, contemporaneous to the filing of this Complaint, a copy of the foregoing Complaint was sent via express mail, return receipt requested, to the Commonwealth's Division of Risk Management, on this date as stated herein as follows:

Division of Risk Management
Department of the Treasury
James Monroe Building, 3rd Floor
101 North 14th Street
Richmond, VA 23219



J. Chapman Petersen

EXHIBIT A

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 982

An Act to amend and reenact §§ 18.2-334.2, 18.2-340.16, 18.2-340.19, 18.2-340.22, and 18.2-340.31 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-340.28:2; Texas Hold'em poker tournaments.

[S 936]

Approved April 9, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-334.2, 18.2-340.16, 18.2-340.19, 18.2-340.22, and 18.2-340.31 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-340.28:2 as follows:

§ 18.2-334.2. Same; bingo games, raffles, duck races, and Texas Hold'em poker tournaments conducted by certain organizations.

Nothing in this article shall apply to any bingo game, instant bingo, network bingo, raffle, or duck race, or Texas Hold'em poker tournament conducted solely by organizations as defined in § 18.2-340.16 which have received a permit as set forth in § 18.2-340.25, or which are exempt from the permit requirement under § 18.2-340.23.

§ 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 75, (ii) Department-approved electronic devices that display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Department-approved cards, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random.

"Board" means the Charitable Gaming Board created pursuant to § 2.2-2455.

"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, Texas Hold'em poker tournaments, 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, playing cards for Texas Hold'em poker, poker chips, 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.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to, (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets, (ii) calling bingo games, (iii) distributing prizes, and (iv) any other services provided by volunteer workers.

"Department" means the Department of Agriculture and Consumer Services.

"Fair market rental value" means the rent that a rental property will bring when offered for lease by a lessor who desires to lease the property but is not obligated to do so and leased by a lessee under no necessity of leasing.

"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 generated by an organization from charitable gaming before the deduction of expenses, including prizes.

"Instant bingo," "pull tabs," or "seal cards" means specific games of chance played by the random selection of one or more individually prepacked cards, including Department-approved electronic versions thereof, with winners being determined by the preprinted or predetermined 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 that the organization has designated on its game program as a jackpot game in which the prize amount is greater than \$100.

"Landlord" means any person or his agent, firm, association, organization, partnership, or corporation, employee, or immediate family member thereof, which owns and leases, or leases any premises devoted

in whole or in part to the conduct of bingo games, and any person residing in the same household as a landlord.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling, submitting and maintaining required records and financial reports, and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Network bingo" means a specific bingo game in which pari-mutuel play is permitted.

"Network bingo provider" means a person licensed by the Department to operate network bingo.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Organization" means any one of the following:

1. A volunteer fire department or volunteer emergency medical services agency or auxiliary unit thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the volunteer fire department or volunteer emergency medical services agency 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 athletic association or booster club or a band booster club established solely to raise funds for school-sponsored athletic or band activities for a public school or private school accredited pursuant to § 22.1-19 or to provide scholarships to students attending such school;

4. An association of war veterans or auxiliary units thereof organized in the United States;

5. A fraternal association or corporation operating under the lodge system;

6. A local chamber of commerce; or

7. Any other nonprofit organization that raises funds by conducting raffles that generate annual gross receipts of \$40,000 or less, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Pari-mutuel play" means an integrated network operated by a licensee of the Department comprised of participating charitable organizations for the conduct of network bingo games in which the purchase of a network bingo card by a player automatically includes the player in a pool with all other players in the network, and where the prize to the winning player is awarded based on a percentage of the total amount of network bingo cards sold in a particular network.

"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.

"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."

"Reasonable and proper business expenses" means business expenses actually incurred by a qualified organization in the conduct of charitable gaming and not otherwise allowed under this article or under Board 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. However, payments made pursuant to § 51.1-1204 to the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund shall be deemed a reasonable and proper business expense.

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

"Texas Hold'em poker game" means a variation of poker in which (i) players receive two cards facedown that may be used individually, (ii) five cards shown faceup are shared among all players in the game, (iii) players combine any number of their individual cards with the shared cards to make the highest five-card hand to win the value wagered during the game, and (iv) the ranking of hands and the rules of the game are governed by the official rules of the Poker Tournament Directors Association.

"Texas Hold'em poker tournament" or "tournament" means an organized competition of players (i) who pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition; (ii) who may be allowed to pay an additional fee, during set preannounced times of the competition, to receive additional poker chips for use in the competition; (iii) who may be seated at one or more tables simultaneously playing Texas Hold'em poker games; (iv) who upon running out of poker chips are eliminated from the competition; and (v) a pre-set number of whom are awarded prizes of value according to how long such players remain in the competition.

§ 18.2-340.19. Regulations of the Board.

A. The Board shall adopt regulations that:

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. *In the case of the conduct of Texas Hold'em poker tournaments, the regulations shall provide that the predetermined percentage of gross receipts may be used for expenses related to compensating operators contracted by the qualified organization to administer such events.* The regulation may provide for a graduated scale of percentages of gross receipts to be used in the foregoing manner based upon factors the Board finds appropriate to and consistent with the purpose of charitable gaming.

2. 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 Board to ascertain the percentage of Virginia residents in accordance with subdivision A 3 of § 18.2-340.24.

Membership lists furnished to the Board or Department 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 (§ 2.2-3700 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. Board regulations shall include capacity for such equipment to provide full automatic daubing as numbers are called. For the purposes of this subdivision, electronic or mechanical equipment for instant bingo, pull tabs, or seal cards shall include such equipment that displays facsimiles of instant bingo, pull tabs, or seal cards and are used solely for the purpose of dispensing or opening such paper or electronic cards, or both; but shall not include (i) devices operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to rest, or (ii) other similar devices that display flashing lights or illuminations, or bells, whistles, or other sounds, solely intended to entice players to play.

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; (ii) permit members who participate in the management, operation or conduct of bingo to play bingo; and (iii) subject to the provisions of subdivision 13 of § 18.2-340.33, permit nonmembers to participate in the conduct of bingo so long as the nonmembers are under the direct supervision of a bona fide member of the organization during the bingo game.

7. Prescribe the conditions under which a qualified organization may sell raffle tickets for a raffle drawing that will be held outside the Commonwealth pursuant to subsection B 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 13 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 18 years may play bingo, provided such person is accompanied by his parent or legal guardian.

10. Require all qualified organizations that are subject to Board 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.

11. Prescribe the conditions under which a qualified organization may sell network bingo cards in accordance with § 18.2-340.28:1 and establish a percentage of proceeds derived from network bingo sales to be allocated to (i) prize pools, (ii) the organization conducting the network bingo, and (iii) the network bingo provider. The regulations shall also establish procedures for the retainage and ultimate distribution of any unclaimed prize.

12. *Prescribe the conditions under which a qualified organization may manage, operate or contract with operators of, or conduct Texas Hold'em poker tournaments.*

B. In addition to the powers and duties granted pursuant to § 2.2-2456 and this article, the Board may, by regulation, approve variations to the card formats for bingo games provided such variations result in bingo games that are conducted in a manner consistent with the provisions of this article. Board-approved variations may include, but are not limited to, bingo games commonly referred to as player selection games and 90-number bingo.

§ 18.2-340.22. Only raffles, bingo, network bingo, instant bingo games, and Texas Hold'em poker tournaments permitted; prizes not gaming contracts.

A. This article permits qualified organizations to conduct raffles, bingo, network bingo, and instant bingo games, and *Texas Hold'em poker tournaments*. All games not explicitly authorized by this article or Board regulations adopted in accordance with § 18.2-340.18 are prohibited. *Nothing herein shall be*

construed to authorize the Board to approve the conduct of any other form of poker in the Commonwealth.

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 Virginia Lottery's Pick-3 number or any number or other designation selected by the Virginia Lottery in connection with any lottery, as the basis for determining the winner of a raffle.

§ 18.2-340.28:2. Conduct of Texas Hold'em poker tournaments by qualified organizations; limitation of operator fee; conditions.

A. Any organization qualified to conduct bingo games on or after July 1, 2019, may conduct Texas Hold'em poker tournaments. The Board shall promulgate regulations establishing circumstances under which organizations qualified to conduct bingo games prior to July 1, 2019, may conduct Texas Hold'em poker tournaments.

B. A qualified organization may contract with an operator to administer Texas Hold'em poker tournaments. Limitations on operator fees shall be established by Board regulations.

C. A qualified organization shall accept only cash or, at its option, checks in payment of any charges or assessments for players to participate in Texas Hold'em poker tournaments. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in Texas Hold'em poker tournaments.

D. 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 Texas Hold'em poker tournaments.

E. No qualified organization shall allow any individual younger than 18 years of age to participate in Texas Hold'em poker tournaments.

§ 18.2-340.31. Audit of reports; exemption; audit and administration fee; additional gross receipts assessment.

A. All reports filed pursuant to § 18.2-340.30 shall be subject to audit by the Department in accordance with Board regulations. The Department may engage the services of independent certified public accountants to perform any audits deemed necessary to fulfill the Department's responsibilities under this article.

B. The Department shall prescribe a reasonable audit and administration fee to be paid by any organization conducting charitable gaming under a permit issued by the Department unless the organization is exempt from such fee pursuant to § 18.2-340.23. Such fee 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 report for each calendar quarter.

C. The audit and administration fee shall be payable to the Treasurer of Virginia. All such fees received by the Treasurer of Virginia shall be separately accounted for and shall be used only by the Department for the purposes of auditing and regulating charitable gaming.

D. In addition to the fee imposed under subsection B, an additional fee of one-quarter of one percent of the gross receipts that an organization reports pursuant to § 18.2-340.30 shall be paid by the organization to the Treasurer of Virginia. All such amounts shall be collected and deposited in the same manner as prescribed in subsections B and C and shall be used for the same purposes.

2. That the Charitable Gaming Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Charitable Gaming Board shall provide an opportunity for public comment on the regulations prior to adoption.

EXHIBIT B

VIRGINIA STATE BUDGET

2021 Special Session I

Budget Bill - HB1800 (Chapter 552)

Bill Order » Office of Agriculture and Forestry » Item 105

Department of Agriculture and Consumer Services

Item 105	First Year - FY2021	Second Year - FY2022
Regulation of Charitable Gaming Organizations (55900)	\$1,687,925	\$1,687,925 \$2,095,525
Charitable Gaming Regulation and Enforcement (55907)	\$1,687,925	\$1,687,925 \$2,095,525
Fund Sources:		
General	\$1,583,066	\$1,583,066 \$1,990,666
Dedicated Special Revenue	\$104,859	\$104,859

Authority: Title 2.2, Chapter 24; Title 18.2, Chapter 8; and Title 59.1, Chapter 51, Code of Virginia.

A. Notwithstanding § 18.2-340.31, Code of Virginia, any and all fees paid by any organization conducting charitable gaming under a permit issued by the department, including audit and administrative fees and permit fees, shall be deposited to the general fund.

B. The department shall deposit into the Investigation Fund any assets it receives as a result of a law enforcement seizure and subsequent forfeiture by either a state or federal court. The fund shall be used to defray the expenses of investigation and enforcement actions and to purchase equipment for enforcement purposes.

C. Included in these amounts is \$100,000 the first year and \$100,000 the second year in nongeneral funds from annual registration fees paid by operators of fantasy contests to support both direct and indirect expenses of the department in the regulation of fantasy contests in Virginia.

D.1 The Office of the State Inspector General shall, with the assistance of the Office of Charitable and Regulatory Programs, review the regulatory structure of charitable gaming in Virginia, to include, at a minimum: (i) current permitting requirements and exemptions; (ii) net revenue dedicated to charitable activities and which types of gaming revenue is excluded from this calculation; (iii) charitable gaming occurring in remote locations not located in the same jurisdiction as the registered address of the charitable organization; (iv) enforcement of the "social quarters" and "members and guests" limitation; (v) the structure of the Charitable Gaming Board including any changes needed to prevent conflicts of interest; (vi) the adequacy of enforcement and resources dedicated to oversight activities of the Office of Charitable and Regulatory Programs; and (vii) whether regulation of charitable gaming would be more appropriately vested with the Virginia Lottery. The Office of the State Inspector General shall report on their findings to the General Assembly no later than October 1, 2021.

2. All regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021 shall remain in force and no additional regulations shall be promulgated or additional physical devices authorized for either charitable or fantasy contests regulated by the Office of Charitable and Regulatory Programs prior to June 31, 2022.

EXHIBIT C

TITLE 11. GAMING
CHARITABLE GAMING BOARD
Chapter 50
Final

« Previous | Next » | Table of Contents »

REGISTRAR'S NOTICE: The Charitable Gaming Board is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 982 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide an opportunity for public comment on any such regulations prior to their adoption.

Title of Regulation: **11VAC15-50. Texas Hold'em Poker Tournament Regulations (adding 11VAC15-50-10 through 11VAC15-50-170).**

Statutory Authority: §§ 18.2-340.19 and 18.2-340.28:2 of the Code of Virginia.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804)786-3983, FAX (804)371-7479, or email michael.menefee@vdacs.virginia.gov.

Effective Date: March 23, 2021.

Summary:

Pursuant to Chapter 982 of the 2020 Acts of Assembly, the action establishes regulations for Texas Hold'em poker tournaments, including requirements for (i) a qualified organization to obtain a permit to conduct a Texas Hold'em poker tournament; (ii) an operator to obtain a registration to administer a Texas Hold'em poker tournament on behalf of a qualified organization; (iii) recordkeeping, use of proceeds, and fees to be paid by a qualified organization to an operator; and (iv) participation in Texas Hold'em poker tournaments, such as conduct of poker games, use of mechanical equipment, and penalties.

Changes to the proposed regulation include: (i) stipulating that, in the event of a conflict between the house rules and Robert's Rules of Poker, the house rules shall prevail; (ii) requiring that the department be named as the obligee on bonds; (iii) removing the provision that granted the board authority to adjust, outside of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the amount of operator compensation that may be counted toward a qualified organization's minimum use of proceeds; (iv) generally reducing restrictions on tournament operators and charitable organizations; and (v) allowing the use of electronic poker tables if such devices are preapproved by the Department of Agriculture and Consumer Services.

11VAC15-50-10. Definitions.

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

"Administer" means the activities by an operator that are associated with production of a poker tournament.

"Agent" means any person authorized by an operator, supplier, or landlord to act for or in place of such operator, supplier, or landlord.

["Board" means the Virginia Charitable Gaming Board.]

"Charitable Gaming Statute" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Statute and this chapter; and (iii) is responsible for the oversight and execution of the written contract between the qualified organization and operator during the poker tournament.

"Conduct" means the actions by a qualified organization associated with the provision of a poker tournament during and immediately before or after the permitted activity, which may include (i) dealing playing cards, (ii) distributing poker chips, (iii) distributing prizes, and (iv) any other services provided by a volunteer game worker or volunteer dealer.

["Department" means the Virginia Department of Agriculture and Consumer Services.]

"Fiscal year" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting the poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Statute and this chapter; and (iii) is responsible for the operation of the qualified organization's poker tournament.

"Immediate family" means a person's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested person" means (i) the president or chief executive officer, treasurer or chief financial officer, an officer, a game manager, or charitable host

representative of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct Texas Hold'em poker tournaments; (ii) the owner, partner, president or chief executive officer, treasurer or chief financial officer, or tournament manager of any operator; or (iii) the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to a qualified organization.

"IRS" means the U.S. Internal Revenue Service or its successor.

"Landlord" means any person or such person's agent, firm, association, organization, partnership, corporation, employee, or immediate family member thereof, who owns or leases any premises devoted in whole or in part for use to hold a poker tournament and any person residing in the same household as a landlord.

"Manufacturer" means a person that assembles from raw materials or subparts a completed piece of charitable gaming equipment or supplies. "Manufacturer" also means a person who or an entity that modifies, converts, adds, or removes parts to or from charitable gaming equipment or supplies.

"Operator" means a person [~~not affiliated with a qualified organization~~] that has registered with the department in accordance with 11VAC15-50-40 to administer poker tournaments.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

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

"Tournament manager" means a person who is employed or contracted by an operator to administer poker tournaments for a qualified organization.

"Use of proceeds" means the use of funds derived by a qualified organization from its charitable gaming activities that are disbursed for those lawful religious, charitable, community, or educational purposes. "Use of proceeds" includes expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation of the qualified organization and used for lawful religious, charitable, community, or educational purposes.

11VAC15-50-20. Organization eligibility: permit requirements.

A. The conduct of charitable gaming is a privilege that may be granted or denied by the department. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization with anticipated gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia in any 12-month period shall obtain a permit from the department prior to the commencement of a poker tournament. To be eligible for a permit an organization must meet all of the requirements of § 18.2-340.24 of the Code of Virginia.

B. In accordance with § 18.2-340.19 A 1 of the Code of Virginia, as a condition of receiving a poker tournament permit, a qualified organization shall use a minimum of 2.5% of gross receipts from its poker tournaments for (i) those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized; (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; or (iii) the cost of compensating an operator who is contracted by the qualified organization to administer its poker tournament. However, the amount from this compensation that may be counted toward the minimum use of proceeds shall not exceed 0.25% of the gross receipts generated from the poker tournament [~~and it may be adjusted by the board at its discretion on an annual basis~~].

C. If an organization fails to meet the minimum use of proceeds requirement, its permit may be suspended or revoked. However, the department shall not suspend or revoke the permit of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a remedial business plan.

D. An organization may request a temporary reduction in the predetermined percentage specified in subsection B of this section from the department. In reviewing such a request, the department shall consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include (i) the organization's overall financial condition, (ii) the length of time the organization has conducted charitable gaming, (iii) the extent of the deficiency, and (iv) the progress that the organization has made in attaining the minimum percentage in accordance with a remedial business plan.

E. [~~An organization must meet all requirements related to the conduct of charitable gaming established in the Charitable Gaming Regulations (11VAC15-40).~~

F.] An organization whose permit is revoked for failure to comply with provisions of subsection B of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The department, at its discretion, may issue the permit if it is satisfied that the organization has made substantial efforts toward meeting its remedial business plan.

11VAC15-50-30. Permit application process for an organization.

A. Any organization anticipating gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia shall complete a form prescribed by the department to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200 with the application unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia or holds a charitable gaming permit issued pursuant to 11VAC15-40-30.

B. The department may initiate action against any organization exempt from permit requirements when the department reasonably believes the organization is not in compliance with the provisions of the Charitable Gaming Statute or this chapter.

C. A permit shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

D. The department shall complete a background investigation of an organization or interested persons 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. The investigation may include the following:

1. A search of criminal history records for the president or chief executive officer, treasurer or chief financial officer, game manager, or charitable host representative of the organization. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provide assurances that all other individuals, excluding an operator, involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia. The department may deny an application if:

a. Any person participating in the management of any charitable gaming has ever been:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. Any person participating in the conduct of charitable gaming has been:

(1) Convicted of any felony in the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) of the Internal Revenue Code by the IRS and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any person for the purpose of organizing or managing, operating, or conducting any charitable gaming activity outside of a written contract with an operator to administer the organization's poker tournament;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds;

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; and

6. Inquiries into the percentage of members who are residents of the Commonwealth for a membership-based organization to determine compliance with the membership requirement of § 18.2-340.24 A of the Code of Virginia.

E. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 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. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as those changes occur;

3. A copy of the written lease or proposed written lease agreement and all other written agreements between an organization and the landlord if the organization rents or intends to rent a facility where a poker tournament is or will be conducted. Information on the lease shall include name, address, and phone number of the landlord; maximum occupancy of the building; and rental amount [; If the landlord is an entity, then the identity of such entity's owners, members, manager, officers, and directors shall be listed in the lease];

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years;

5. A statement whether the organization will manage, operate, and conduct its own poker tournament or will contract with an operator to administer its poker tournament. If the organization contracts with an operator, then the identity of the operator shall be disclosed, a copy of the written contract with the operator shall accompany the application, and the written contract shall comply with the provisions of 11VAC15-50-140;

6. If the organization uses or intends to use an operator to administer its poker tournament, the identity of the organization's charitable host

representative and a copy of a current identification of the charitable host representative, such as a driver's license or other government issued identification;

7. If the organization intends to manage, operate, and conduct or manages, operates, and conducts its own poker tournament, the designation and identity of the organization's game manager, who shall be a person and shall be responsible for the operation and conduct of the poker tournament for the qualified organization, and a copy of a current identification of the game manager, such as a driver's license or other government issued identification;

8. If the organization intends to manage, operate, and conduct a poker tournament, then a copy of written internal control policies and procedures that includes segregation of duties, cash security, and cash controls based on generally accepted standards;

9. Written [disclosure] statement as to whether (i) the president or chief executive officer, treasurer or chief financial officer, an officer, a game manager, or charitable host representative; (ii) an immediate family member of an individual listed in clause (i) of this subdivision; or (iii) persons residing in the same household as an individual listed in clause (i) of this subdivision has directly or indirectly any interest or ownership in an operator; and

10. A sample of the badge to be worn by the game manager and other game workers during the operation and conduct of the qualified organization's poker tournament, which shall include the following;

a. A recent photo of the person;

b. The first name and last name of the person;

c. The name of the qualified organization; and

d. The date the badge was issued to the person.

F. An organization applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document; IRS determination letter; or any other document or information specified in subsection E of this section only if there are any amendments or changes to these documents or information that are directly related to the management, operation, or conduct of charitable gaming.

G. The department may request copies of minutes of meetings of the organization and any contracts with landlords, suppliers, or operators to which the organization is or may be a party.

H. If any information on the permit application changes or is found to be inaccurate, then the qualified organization shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

I. A qualified organization wishing to change the date, time, location, or operator of its poker tournament shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

J. A qualified organization may cancel its poker tournament due to inclement weather, a disaster, or other circumstances outside the organization's control without an amendment to its permit.

K. Any qualified organization that ceases to conduct poker tournaments shall immediately notify the department in writing and provide the department a report as to the disposition of all unused charitable gaming supplies on a form prescribed by the department.

~~L. No qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household shall directly or indirectly receive any payment from the qualified organization's landlord, agents, employees, their immediate family members, or persons residing in their household unless such payment from the landlord is directly related to a written contract for the facility leased for use to hold a poker tournament as required by 11VAC15-50-90 A and such a payment is made by check from the landlord directly to the qualified organization's charitable gaming account.~~

~~M. No qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household shall directly or indirectly receive any loan from a landlord, operator, or supplier of charitable gaming supplies or the agents, employees, immediate family members, or persons residing in the household of the landlord, operator, or supplier of charitable gaming supplies;)~~

11VAC15-50-40. Operator registration.

A. No person shall administer a poker tournament on behalf of a qualified organization without an operator registration. A person seeking to administer a poker tournament on behalf of a qualified organization shall apply to the department for an operator registration on a form prescribed by the department. The application fee for an operator registration is \$1,000.

B. The department shall conduct a background investigation prior to the issuance of a registration to any operator. The investigation may include the following:

1. Verification that the operator is authorized to conduct business in the Commonwealth, which may include registration with the State Corporation

Commission, the Department of Taxation, or the Virginia Employment Commission.

2. Verification of current compliance with Commonwealth's tax laws.

3. A search of criminal history records on the owner, partner, president or chief executive officer, treasurer or chief financial officer, and the operator's tournament manager. If the owner, partner, president or chief executive officer, treasurer or chief financial officer, or the operator's tournament manager is domiciled outside of the Commonwealth or has resided in the Commonwealth for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which that individual has resided during the previous five years shall be provided by the applicant. Appropriate information and authorizations shall be provided to the department to verify this information.

C. An operator registration shall be valid for a period of one year from the date of issuance or for a period specified on the registration. The department may issue a registration for a period of less than one year.

D. The department may refuse to issue a registration or may suspend or revoke a registration if an operator [~~officer, director, employee, agent, or owner or any of its officers, directors, employees, agents, or owners~~]:

1. Is operating without a valid license, permit, certificate, registration, or other similar authority related to gambling in any state, territory, or possession of the United States; the District of Columbia; or any political subdivision thereof;

2. Uses or continues to use a product that has been recalled by the manufacturer;

3. Administers poker tournaments for unauthorized persons or entities, such as [~~qualified~~] organizations not permitted by the department pursuant to 11VAC15-50-30 or otherwise exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; engages or participates in illegal gambling; or is not authorized to conduct business in the Commonwealth;

4. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to gambling or the administration of poker tournaments involving or concerning the operator, any officer, director, employee, agent, or owner during the term of the operator's registration;

5. [~~Is involved directly or indirectly with another operator whose registration was denied, suspended, or revoked by the department~~ Breaches the operator's contract with a qualified organization entered into pursuant to 11VAC15-50-140];

6. Fails to provide the report required by subsection I of this section;

7. [Fails to maintain a surety bond in accordance with this section;

8.] Has [~~been found by the department to have~~] violated any provision of the Charitable Gaming Statute or this chapter [~~or has been involved in another operator's violation of any provisions of the Charitable Gaming Statute or an operator's denial, suspension, or revocation of a registration~~]; or

[~~8-9.~~] Has been engaged in activities that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

E. The registration application for an operator that has not previously held a registration shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of written internal control policies and procedures that includes segregation of duties, cash security, and cash controls based on generally accepted standards;

3. [Written evidence of a surety bond made payable to the department in accordance with the terms of subsection K of this section;

4.] A list of all qualified organizations on whose behalf the applicant intends to administer a poker tournament, the locations at which the applicant intends to administer a poker tournament, and any other information deemed necessary by the department;

[~~4.5.~~] A copy of each written contract with a qualified organization;

[~~5.6.~~] The identity of the operator's tournament managers, dealers, and other game workers. A copy of a current identification, such as a driver's license or other government issued identification, of the operator's tournament managers, dealers, and other game workers; and

[~~6.7.~~] A sample of the badge to be worn by the operator's poker tournament manager, charitable host representative, dealer, and other game workers during the administering of the qualified organization's poker tournament. A badge shall include the following:

a. A recent photo of the person;

b. The first name and last name of the person;

c. The name of the operator; and

d. The date the badge was issued to the person.

F. If any information on the registration application changes or is found to be inaccurate, then the operator shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

G. Operators applying to renew a registration previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document or any other document or information specified in subsection E of this section only if there are any amendments or changes to these documents or information that are directly related to the administering of a poker tournament.

H. Operators shall ensure that a copy of a detailed invoice is provided to the qualified organization for each [~~poker tournament day~~] it administers [~~one or more poker tournaments~~] on behalf of the qualified organization. The invoice shall reflect the following:

1. Name, address, and the organization number of the qualified organization;

2. Date and location of the poker tournament; and

3. All information needed to calculate the fee owed to the operator, including gross receipts, net receipts, and prize disbursement.

I. Each operator shall provide a report to the department by March 1 of each year for the fiscal year ending December 31 of the previous year for each qualified organization it contracted with to administer a poker tournament in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each qualified organization and the following information for each poker tournament:

1. The total amount of gross receipts generated from each poker tournament;

2. The total amount of prizes disbursed to players for each poker tournament;

3. The total number of players at each poker tournament;

4. The total amount charged by the operator to the qualified organization for administering the poker tournament; and

5. Any other information deemed necessary by the department.

J. An operator that administers a poker tournament for a qualified organization exempt from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia shall ensure the qualified organization is and remains exempted from obtaining or possessing such a permit prior to any poker tournament. The operator shall also obtain a written and signed statement from the president or chief executive officer and treasurer or chief financial officer, or another officer or director if the president or chief executive officer and treasurer or chief financial officer are filled by the same person, confirming that gross receipts are expected to be less than or equal to the amount set forth in § 18.2-340.23 of the Code of Virginia. Such statements shall be dated and kept on file for a minimum of three years from the close of a fiscal year.

K. [An operator shall have and maintain an annual surety bond from a surety company entitled to do business in this Commonwealth. The surety bond shall be payable to the department and be in an amount deemed necessary by the department to secure the faithful discharge of the duties of the operator to the organization for whom the operator administers poker tournaments and to participants and players in its poker tournaments, including payment of expenses and prizes payable. However, the amount of the surety bond shall not be less than \$200 and not more than the typical prize payable in any given poker tournament administered by the operator during the period for which the surety bond applies.

L.] The operator shall maintain training records related to poker tournaments and 11VAC15-50-50 C for all of its tournament managers, dealers, and other game workers. Such records shall be available for inspection by the department, its employees, or its agents at their request.

[~~E. M.] The operator shall disclose to the department whether (i) any of its directors, officers, owners, partners, employees, independent contractors, or agents; (ii) an immediate family member of an individual listed in clause (i) [~~or of~~] this subdivision; or (iii) persons residing in the same household as an individual listed in clause (i) [~~or of~~] this subdivision is affiliated or associated with any qualified organization that is authorized pursuant to §§ 18.2-340.23 and 18.2-340.24 of the Code of Virginia to manage, operate, and conduct a poker tournament or to contract with an operator to administer its poker tournament [or has made or received a payment from a qualified organization for which it administers a poker tournament] .~~

[~~M. N.] An operator shall not prepare or submit a permit application or a financial report on behalf of a qualified organization.~~

11VAC15-50-50. Suspension, revocation, or denial of permit for organization.

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit of any qualified organization to manage, operate, or conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments for cause, including any of the following reasons:

1. The qualified organization is found to be in violation of or has failed to meet any of the requirements of the statutes or regulations governing the operation, management, and conduct of charitable gaming in the Commonwealth.
2. The qualified organization is found to be not in good standing with its state or national organization.
3. The IRS revokes or suspends the qualified organization's tax-exempt status.
4. The qualified organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.
5. The qualified organization is found to have a member involved in the management, operation, or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor as follows:
 - a. For any person participating in the management or operation of any charitable gaming:
 - (1) Convicted of a felony; or
 - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
 - b. For any person participating in the conduct of charitable gaming:
 - (1) Convicted of any felony within the preceding 10 years; or
 - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
6. The qualified organization fails to report a violation as required by 11VAC15-50-170.
7. The qualified organization is found to have managed, operated, or conducted a poker tournament or contracted, whether written or verbal, with an operator or others that administered a poker tournament on its behalf without a permit issued to the qualified organization to do so unless the qualified organization did so in compliance with § 18.2-340.23 A of the Code of Virginia.
8. The qualified organization fails to comply with the disclosure requirement pursuant to 11VAC15-50-30 E 9.
9. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department a written contract that complies with 11VAC15-50-140; fails to submit or provide to the department a new or amended written contract with its operator within 20 days after the contract is signed by all parties to the contract; or fails to submit or provide to the department a new or amended written contract with its operator that complies with 11VAC15-50-140.
10. The qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household directly or indirectly received a loan from a landlord, operator, or supplier of charitable gaming supplies, its agents, its employees, their immediate family members, or persons residing in their household.

[11. The operator fails to fulfill any of the conditions of the written contract with the qualified organization as identified under 11VAC15-50-140;]

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall be cause for the denial of the permit, and no qualified organization shall manage, operate, and conduct any poker tournaments or contract with an operator to administer the qualified organization's poker tournaments until the requirements are met and a permit is obtained.

C. Except when an qualified organization fails to meet any of the requirements of § 18.2-340.24 of the Code of Virginia, in lieu of suspending, revoking, or denying a permit to manage, operate, and conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments, the department may afford a qualified organization an opportunity to enter into a compliance agreement specifying additional conditions or requirements as it may deem necessary to ensure a qualified organization's compliance with the statute and regulations governing the conduct of charitable gaming activities and may require that a qualified organization participates in such training as is directed or offered by the department.

D. If a permit is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension.

11VAC15-50-60. Operation and conduct of Texas Hold'em poker tournaments.

A. A Texas Hold'em poker tournament is a competition at which:

1. Players shall pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition;

2. Players may be allowed to pay an additional fee during set preannounced times of the competition to receive additional poker chips for use in the competition;

3. Players may be seated at one or more tables simultaneously playing Texas Hold'em poker games:

4. Players shall, upon running out of poker chips, be eliminated from the competition; and

5. A set preannounced number of players shall be awarded prizes of value according to how long such players remain in the competition.

B. Any competition that does not meet the requirements established in subsection A of this section is not permissible. A qualified organization or operator shall ensure its Texas Hold'em poker tournament meets the requirements established in subsection A of this section.

C. Operations of poker tournaments.

1. Participation in poker tournaments.

a. Qualified organizations shall (i) only manage, operate, and conduct a poker tournament after a permit has been issued by the department unless the qualified organization is exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; or (ii) obtain a permit pursuant to 11VAC15-50-30 and contract with an operator that is registered pursuant to 11VAC15-50-40 to administer its poker tournament.

b. An operator shall only administer a poker tournament for a qualified organization (i) permitted by the department pursuant to 11VAC15-50-30, or (ii) exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia, and an operator shall only administer a poker tournament after it is registered pursuant to 11VAC15-50-40.

c. All persons participating as a player in a poker tournament shall be 18 years of age or older.

d. [The A] qualified organization's game managers, volunteer game workers, volunteer dealers, charitable host representatives, their immediate family members, or persons residing in their household shall [not be permitted to] participate [in] or otherwise play in [any of the qualified organization's poker tournaments a poker tournament only as permitted in the applicable house rules].

e. [The An] operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, agents, their immediate family members, or persons residing in their household shall [not be permitted to] participate [in] or otherwise play in [any a] poker [tournaments administered by the operator tournament only as permitted in the applicable house rules].

f. The qualified organization is responsible for all actions performed by its game managers, volunteer game workers, volunteer dealers, and charitable host representatives [, and if the qualified organization contracted with an operator to administer its poker tournament, then the qualified organization is responsible for the operator's actions during its poker tournament].

2. Operations of tournaments.

a. During a poker tournament, if the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager must be physically present during the entire duration of the poker tournament. If an operator is administering the poker tournament, then [the operator's tournament manager [and charitable host representative] must be physically present during the entire duration of the poker tournament [and the charitable host representative must be present for a portion of the poker tournament and be physically or remotely available for all times a tournament is in play].

b. During a poker tournament, the qualified organization or operator shall provide badges for each of its game manager, operator's tournament manager, charitable host representative, dealers, and other game workers that shall be worn in a manner in which the badges are visible to players and to the department, its employees, or its agents during the duration of the poker tournament. A game manager, operator's tournament manager, charitable host representative, dealers, and other game workers shall also possess a current photo identification, such as a driver's license or other government issued identification. The game manager, tournament manager, charitable host representative, dealers, and other game workers shall provide the badge, current photo identification, or both upon request by the department, its employees, or its agents to do so. These badges shall meet the criteria set forth in 11VAC15-50-30 and 11VAC15-50-40.

c. If the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament as required by 11VAC15-50-110. If an operator is administering the poker tournament, then the operator's tournament manager and charitable host representative shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament as required by 11VAC15-50-110.

d. All persons involved in managing, operating, conducting, or administering a poker tournament shall be 18 years of age or older.

e. During the poker tournament, a qualified organization or operator may award players participating in the poker tournament prizes of value, the value of which may be determined by the game manager or the operator's tournament manager, under the following conditions, including:

(1) A player, within a specific period of time as determined by the game manager or the operator's tournament manager, wins the highest ranked

hand:

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

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

(5) The last player who remains in the poker tournament who participated in the last man standing bet;

(6) An amount of poker chips, as determined by the game manager or operator's tournament manager, that are placed into the pot at a randomly selected table by the game manager or the operator's tournament manager before the hand begins, before any players place forced bets, commonly referred to as "blinds"; or

(7) Those players who pay an additional fee to receive additional poker chips at the set preannounced times for use in the poker tournament may be awarded prizes based on how long such player remains in the tournament, as determined by the game manager or the operator's tournament manager.

f. The game manager or the operator's tournament manager shall:

(1) Adhere to the definition of Texas Hold'em poker game as stated in § 18.2-340.16 of the Code of Virginia;

(2) Apply the ranking of hands and the rules of the poker tournament as governed by the official rules of the Poker Tournament Directors Association; and

(3) Apply the code of conduct and etiquette as governed by Robert's Rules of Poker.

g. For the purposes of maintaining integrity of the poker tournament, the dealer shall only be responsible for dealing playing cards and handling poker chips at the poker table during the poker tournament and not assigned any other duties or responsibilities not directly related to such activities.

h. If the charitable host representative is involved in any portion of the cash handling during a poker tournament administered by an operator, then the charitable host representative shall adhere to the operator's internal control policies and procedures that were submitted to the department by the operator pursuant to 11VAC15-50-40 E.

~~[i. The poker tournament shall include a live dealer, physical playing cards, and physical poker chips.]~~

3. A qualified organization shall display prominently its charitable gaming permit during the poker tournament, and if the qualified organization uses an operator to administer its poker tournament, then the operator shall display its operator registration.

4. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently a poster advising the public of a phone number where complaints relating to the poker tournament may be made. Such posters shall be in a format prescribed by the department, as required by 11VAC15-50-170.

5. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently a poster that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers.

6. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently any house rules, which shall govern the poker tournament beyond the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker. Any house rules shall be consistent with the Charitable Gaming Statute, this chapter, [and] the official rules for poker tournaments established by the Poker Tournament Directors Association [~~and the code of conduct and etiquette as governed by Robert's Rules of Poker~~].

7. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall ensure any poker chips, playing cards, or mechanical poker equipment used to conduct the poker tournament are not counterfeit, tampered with, or otherwise affect the integrity of the poker tournament prior to, during, and

after the poker tournament. Any poker chips found to be counterfeit or playing cards or mechanical equipment found to be tampered with shall be removed immediately from the poker tournament. Such incidents shall be reported by the qualified organization or jointly by the qualified organization and operator to the department pursuant to 11VAC15-50-170.

8. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall ensure all mechanical poker equipment is fully functional and maintains the integrity of the poker tournament prior to, during, and after the poker tournament. Any mechanical poker equipment not meeting these particular standards shall be removed immediately from the poker tournament by the game manager, or if the qualified organization uses an operator to administer its poker tournament, then the charitable host representative and the operator's tournament manager.

9. A qualified organization shall not manage, operate, or conduct its poker tournament or have its poker tournament administered by an operator in a facility or [on] premises that conducts gambling [or gaming] activities, unless such activities are authorized by Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia; Charitable Gaming Regulations (11VAC15-40); [or] this chapter [~~Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia; and Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia~~].

10. Only qualified organizations, registered operators, and permitted charitable gaming suppliers shall advertise a poker tournament. Any printed advertisement 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 used for the poker tournament, name of the operator, or any word referring to the poker tournament.

11VAC15-50-70. Charitable gaming supplies; approval of mechanical card shuffler and dealer shoes and other electronic and mechanical equipment.

A. [Operators and organizations shall purchase charitable gaming supplies, including cards, chips, and electronic and mechanical devices, only from a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia.

B. Electronic and mechanical devices, including electronic poker tables, may be used to conduct poker games or tournaments, provided that such electronic or mechanical equipment or device is preapproved by the department in accordance with and subject to this section and such technical standards adopted by the department.

C.] The department shall set testing criteria for all mechanical card shuffler and dealer shoes and other [electronic and] mechanical equipment used during a poker tournament. A mechanical card shuffler and dealer shoe or other [electronic and] mechanical equipment used during a poker tournament shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use during a poker tournament until an identical sample card shuffler and dealer shoes or equipment containing identical software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the mechanical card shuffler and dealer shoe, other mechanical equipment, associated hardware, and associated software conform, at a minimum, to the requirements of this chapter. Once the testing facility reports the test results to the department, the department will either approve or reject the mechanical card shuffler and dealer shoe or other mechanical equipment and inform the manufacturer of the results. If any such system or equipment does not meet the department's criteria, that system or equipment shall be recalled and shall not be distributed in the Commonwealth. The cost of testing shall be borne by the manufacturer of such equipment.

[B; D.] Notwithstanding any other testing criteria established by the department, the mechanical card shuffler and dealer shoe shall be tested to the standards established by Gaming Laboratories International for card shufflers and dealer shoes.

11VAC15-50-80. Rules of play.

Qualified organizations and operators shall adhere to the official rules of the Poker Tournament Directors Association and the code of conduct and etiquette from Robert's Rules of Poker. [To the extent any house rules are inconsistent with the rules established by Robert's Rules of Poker, the applicable house rules shall prevail.]

11VAC15-50-90. Requirements regarding renting premises, agreements, and landlord participation.

A. No qualified organization [or operator] shall rent or use any leased premises to be used for poker tournaments unless all terms for rental or use are set forth in a written contract and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.

B. Qualified organizations shall not make any payments to a landlord except by check drawn directly from the qualified organization's charitable gaming account and in accordance with the conditions set forth in the written contract described in subsection A of this section.

C. [~~No~~ Subject to a qualified organization's conflict of interest policies and related IRS regulations, a) landlord, its agents, its employees, their immediate family members, or persons residing in their household [shall may] directly or indirectly make any loan to any qualified organization, operator, or supplier of [charitable poker] gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household.

D. [~~No~~ Subject to a qualified organization's conflict of interest policies and related IRS regulations, a) landlord, its agents, its employees, their immediate family members, or persons residing in their household [shall may] directly or indirectly make any payment to any qualified organization, operator, supplier

~~of [charitable poker] gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household [unless such payment from the landlord to the qualified organization is directly related to a written contract and the facility leased for use to hold a poker tournament as required by subsection A of this section and such a payment is made by check from the qualified organization's charitable gaming account directly to the landlord].~~

~~E. [No Subject to a qualified organization's conflict of interest policies and related IRS regulations, a] landlord, its agent, its employees, their immediate family members, or persons residing in their household [shall may], at a poker tournament operated, conducted, or administered on the landlord's premises:~~

~~1. Participate in the management, operation, conduct, or administration of any poker tournament;~~

~~2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces [, provided that such person is a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia];~~

~~3. Require as a condition of the [written contract lease] that a particular supplier of charitable gaming supplies [or operator] is used by the qualified organization; or~~

~~4. Provide, advise, or direct the qualified organization or operator to use any particular person for the purposes of the management, operation, conduct, or administration of a poker tournament that is to be held in the landlord's facility.~~

~~E. [No Subject to a qualified organization's conflict of interest policies and related IRS regulations, a] member of a qualified organization involved in the management, operation, or conduct of a poker tournament [shall may] provide [any] services to a landlord or be remunerated in any manner by the landlord of the facility that a qualified organization is using to operate and conduct its poker tournament.~~

~~[G. A qualified organization or an operator shall disclose to the department any payment or loan made, directly or indirectly, to one of its members or any person affiliated or associated with the qualified organization or operator, their immediate family member, or a person residing in their household by a landlord with whom the qualified organization has entered into a written contract pursuant to subsection A of this section.]~~

11VAC15-50-100. Bank accounts.

~~A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank account, and all gaming receipts shall be deposited into the charitable gaming bank account.~~

~~B. Disbursements for expenses by the qualified organization other than prizes and reimbursement of meal expenses shall be made by check directly from its charitable gaming account. However, the expenses incurred by an operator administering a poker tournament may be disbursed from the qualified organization's charitable gaming account through an electronic fund transfer to the operator provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.~~

~~C. All charitable gaming bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.~~

~~D. All receipts from the poker tournament shall be deposited by the second business day following the tournament at which they were received. However, receipts received by an operator for administering a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.~~

11VAC15-50-110. Recordkeeping.

~~A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations managing, operating, and conducting poker tournaments or contracting with an operator to administer poker tournaments shall maintain a system of records for a minimum of three years from the close of the fiscal year for each poker tournament on forms prescribed by the department or reasonable facsimiles of those forms approved by the department that include:~~

~~1. Charitable gaming supplies purchased and used for poker tournaments;~~

~~2. If the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament. If an operator is administering the poker tournament, then the operator's tournament manager and charitable host representative shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament;~~

~~3. All discounts provided;~~

~~4. A reconciliation to account for cash received from workers who received payment from players for entry into the poker tournament;~~

~~5. An admissions control system that provides a cross-check on the number of players in attendance and sales. This may include a ticket control~~

system, cash register, or any similar system;

6. An itemized record of all receipts and disbursements associated with a poker tournament, including written contracts with an operator, rent, advertisement, and security as well as use of proceeds disbursements. Copies of invoices and other documentation for all such disbursements shall also be maintained;

7. All other operating expenses, for which receipts from a poker tournament were used to pay such expenses. Copies of invoices and other documentation for all such other expenses shall also be maintained;

8. A record of the name and address of each tournament winner who was awarded a prize during or after the conclusion of the poker tournament; and

9. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the IRS's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

B. The qualified organization and their contracted operator shall each maintain independent records from one another on each poker tournament. The qualified organization shall not have its records managed, maintained, or stored by an operator.

C. All unused charitable gaming supplies shall either be returned for refund to the supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The qualified organization shall maintain a receipt for all such charitable gaming supplies returned to the supplier or destroyed.

11VAC15-50-120. Financial reporting, penalties, inspections, and audits.

A. Each qualified organization shall file an annual report of receipts and disbursements by March 15 of each year on a form prescribed by the department. The annual report shall cover the activity for the fiscal year. The qualified organization may combine this report with its report for other forms of charitable gaming into a single report to satisfy 11VAC15-40-90 and this section.

B. The annual report shall be accompanied by the audit and administration fee as established by the department for the fiscal year unless the fee has been remitted with quarterly reports or the qualified organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia.

C. A qualified organization desiring an extension to file its annual report for good cause shall request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee, unless exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

D. Unless exempted by § 18.2-340.23 of the Code of Virginia, qualified organizations realizing any gross gaming receipts in any calendar quarter shall file a quarterly report of receipts and disbursements on a form prescribed by the department as follows:

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

Qualified organizations shall submit quarterly reports with the appropriate audit and administration fee unless the qualified organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The qualified organization may combine this report with other forms of charitable gaming into a single report to satisfy 11VAC15-40-90 and this section. An annual financial report may substitute for a quarterly report if the qualified organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter.

E. A qualified organization desiring an extension to file its quarterly report for good cause shall request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee unless exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

F. Qualified 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 until such time as the required report is filed.

G. Qualified organizations failing to file a quarterly report or annual report on or before the due date as specified in subsections A and D of this section, unless an extension was granted by the department in accordance with subsections C and E of this section, shall have their permit automatically revoked by the

department as required by § 18.2-340.30 of the Code of Virginia.

H. Any qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations), regardless of when such funds may have been received or whether it has a valid permit from the department, shall file an annual financial report on a form prescribed by the department on or before March 15 of each year until such funds are depleted. If a qualified organization ceases the conduct of charitable gaming, it shall provide the department with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president or the chief executive officer of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

I. If a qualified 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 department may impose restrictions or additional recordkeeping and financial reporting requirements.

J. Any records deemed necessary to complete an inspection, audit, or investigation may be collected by the department, its employees, or its agents from the premises of an organization or any location where charitable gaming is conducted or any location where the records are located or stored by the organization. The department shall provide a written receipt of such records at the time of collection.

11VAC15-50-130. Use of proceeds.

A. All payments by a qualified organization intended as use of proceeds must be made by check written from the qualified organization's charitable gaming account.

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, a qualified organization may obtain department 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 from the qualified organization's charitable gaming account may be included as a use of proceeds if the payment is authorized by the qualified 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 department.

C. Expenditures of charitable gaming funds for social or recreational activities or for events, activities, or programs that 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. Payment made to or on behalf of (i) indigent, sick, or deceased members or (ii) the immediate family of an individual listed in clause (i) of this subdivision shall be allowed as use of proceeds provided they are approved by the qualified organization's board of directors and the need is documented.

E. Payments made directly for the benefit of an individual member, member of an individual member's family, or person residing in an individual member's 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 a qualified organization shall not be made for any activity that is not permitted by federal, state, or local laws or for any activity that attempts to influence or finance directly or indirectly political persons or committees or the election or reelection of any person who is or has been a candidate for public office.

G. [~~Organizations~~ Qualified organizations] shall maintain details of all use of proceeds disbursements for a minimum of three years from the close of the fiscal year and shall make this information available to the department upon request.

H. The department may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11VAC15-50-20 D. If any payment claimed as use of proceeds is subsequently disallowed, a qualified organization may be allowed additional time as specified by the department to meet minimum use of proceeds requirements.

I. The department may publish the amount of fees paid by a qualified organization to an operator for administering its poker tournaments.

J. The department may publish:

1. The amount of proceeds generated by the qualified organization's poker tournaments used for (i) lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered 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; and

2. Any [~~other financial~~] information [~~deemed necessary by the department~~ already available to the public].

11VAC15-50-140. Requirements regarding contracts.

A. If the qualified organization decides to use an operator to administer its poker tournament, then it shall enter into a written contract with the operator.

B. The written contract between the qualified organization and operator shall identify the conditions and cost for the operator to administer the poker tournaments for the qualified organization. This written contract shall:

1. Require the operator to provide assurances to the qualified organization and the department that its owner, partner, president or chief executive

officer, treasurer or chief financial officer, and the operator's tournament manager, employees, independent contractors, or agents have never been convicted or pleaded nolo contendere to any felony or any misdemeanor as follows:

a. For any person serving as the operator's tournament manager for the qualified organization's poker tournament:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. For any person serving as a dealer or any other game worker for the qualified organization's poker tournament:

(1) Convicted of any felony within the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

c. For any owner, partner, president or chief executive officer, and treasurer or chief financial officer of the operator:

(1) Convicted of or pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense that, if committed in the Commonwealth, would be a felony; or

(2) Convicted of or pleaded nolo contendere to a crime involving gambling.

2. Require the operator to report to the qualified organization and the department within 20 days if there is any action taken against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

3. Require the operator to report to the qualified organization and the department within 20 days if it failed to file or has 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 or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia.

4. Require the operator to provide the qualified organization and the department with access to the operator's financial record for each poker tournament administered on its behalf for at least the past three fiscal years and if necessary, to provide the qualified organization with copies or the department with the originals of such records or any other records deemed necessary to complete an inspection, audit, or investigation without hindrance from the operator. The department shall provide a written receipt for the originals of such records at the time of collection.

5. Require the operator to provide the qualified organization with a copy of a detailed invoice for each poker tournament it administers on behalf of the qualified organization, which the invoice shall meet the requirements specified in subsection H of 11VAC15-50-40.

6. Require the operator to retain all bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, which shall be maintained for a minimum of three years following the close of a fiscal year.

7. [Require the operator to purchase any mechanical card shuffler or other mechanical equipment approved pursuant to 11VAC15-50-70 from a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia and require any purchase of playing cards or poker chips from a nonpermitted charitable gaming supplier to be reported to the department.

8.] Require the operator's tournament manager, dealers, and other game workers to wear badges that meet the requirements set forth in subsection E of 11VAC15-50-40 and for each of them to possess a current photo identification, such as a driver's license or other government issued identification while they administer the qualified organization's poker tournament. The operator's tournament manager, dealers, and other game workers shall provide the badge, current photo identification, or both upon request by the department, its employees, or its agents.

[9. 8.] Require the operator to display prominently its operator's registration during each poker tournament administered on the qualified organization's behalf.

[10. 9.] Require the operator to display prominently any house rules, which shall govern the poker tournament [beyond the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker,] during each poker tournament administered on the qualified organization's behalf. [Any house rules shall be consistent with the charitable gaming statutes, this chapter, the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker.]

[11. 10.] Require the operator to display prominently a poster, which bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers, during each poker tournament administered on the qualified organization's behalf.

~~[12: 11.] Require the operator to provide the qualified organization with a copy of written internal control policies and procedures, which will be used during each poker tournament administered on the qualified organization's behalf.~~

~~[13: 12.] Require the operator to refrain from administering poker tournaments for unauthorized persons or entities, such as [qualified] organizations not duly permitted by the department pursuant to 11VAC15-50-30, unless it is exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; engages or participates in illegal gambling; or is not authorized to conduct business in the Commonwealth.~~

~~[14. Require the operator to obtain a surety or surety bond payable to the qualified organization if the operator fails to perform its contractual obligation. The amount of the surety or surety bond shall (i) be agreed upon between both the qualified organization and the operator and (ii) be sufficient to cover any liability resulting from the administration of the qualified organization's poker tournaments. The written contract shall contain specific information, including the name and contact information on the provider of the surety or surety bond on how the qualified organization shall make a claim against the surety, surety bond, or another form of guaranty. The operator shall inform the qualified organization on any changes related to this subsection.~~

~~15- 13.] Require the operator to comply with any restrictions or additional recordkeeping and financial reporting requirements imposed upon the qualified organization by the department due to deficiencies identified through inspection, audit, or other means.~~

~~[16:14.] Require no more than 50% of the gross receipts [net of prizes payable] from the poker tournament shall go to the operator as payment to the operator for the expense of administering the qualified organization's poker tournament. Such payment may include a fixed fee, but such a fee shall not exceed 50% of the gross receipts [net of prizes payable] from the poker tournament. Any fee, up to the allowable amount shall be specified within the written contract.~~

~~[17. Require the operator to pay all expenses, other than prizes, to be made by check directly from its account.~~

~~18. Require the operator to prohibit its directors, officers, owners, partners, tournament managers, employees, independent contractors, and agents from participating in or otherwise playing in any poker tournaments it administers for the qualified organization.~~

~~19-A-15. Subject to the other provisions of this section, include provisions specifying the parties' respective obligations related to expenses incurred in connection with the hosting, management, conduct, or administration of a poker tournament.~~

~~16. Include a) provision relating to any negotiated expenses associated with the administration of the poker tournament. These expenses shall be specifically identified in the written contract with a specified amount. The total amount of expenses related to the administration of the poker tournament shall not exceed the allowable expense identified in subdivision [16 14] of this subsection.~~

~~[20-A 17. Include a) provision prohibiting the operator from charging, assessing, levying, collecting, or otherwise requesting the payment of any fees, charges, or any other assessments against the qualified organization for administering its poker tournament except, for the fee allowed in subdivision [16 14] of this subsection.~~

~~[21-A 18. Include a) provision specifying the duration of the written contract period, and the termination rights for the qualified organization and operator.~~

~~[22. If agreed upon by both the qualified organization and the operator, the receipts received by an operator due to the operator's administering of a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. 19. Specify the terms of any arrangement agreed upon by the qualified organization and the operator regarding the deposit of the receipts received by an operator due to the operator's administering of a poker tournament for a qualified organization through an electronic fund transfer into the qualified organization's charitable gaming account.] A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.~~

~~[23. If agreed upon by both the qualified organization and the operator, the expenses incurred by an operator administering a poker tournament may be disbursed from the qualified organization's charitable gaming account through an electronic fund transfer to the operator provided that such an arrangement is agreed upon by both the qualified organization and the operator. 20. Specify the terms of any arrangement agreed upon by the qualified organization and the operator regarding the disbursement through an electronic fund transfer from the qualified organization's charitable gaming account of expenses incurred by the operator administering a poker tournament.] A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.~~

~~[24. If the operator leases a facility for the purposes of administering the qualified organization's poker tournament, then the written contract shall prohibit the landlord from serving as an operator and meets the conditions set forth in 11VAC15-50-90.]~~

C. Qualified organizations shall only contract with those operators that adhere to the provisions of the Charitable Gaming Statute and this chapter.

D. An organization shall provide a copy of all written contracts between the qualified organizations and the operator to the department upon application for a permit or upon the entering into any contract subsequent to the application.

11VAC15-50-150. Suppliers of charitable gaming supplies.

For purposes of this chapter, a supplier shall be subject to the provisions of 11VAC15-40-120.

11VAC15-50-160. Procedural rules for informal fact-finding conferences and hearings.

A. Informal fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit issued to a qualified organization to manage, operate, and conduct poker tournaments or registration issued to an operator to administer poker tournaments shall be denied, suspended, or revoked except (i) after review and approval of such proposed denial, suspension, or revocation action by the board and (ii) upon notice stating the basis for such proposed action and the time and place for an informal fact-finding conference as set forth in § 2.2-4019 of the Code of Virginia unless waived by both the named party and the department.

2. If a basis exists for a refusal to renew, suspend, or revoke a permit or registration, the department shall notify by certified mail or by hand delivery to the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at an informal fact-finding conference. If there is no withdrawal, an informal fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Qualified organizations or operators that wish to waive their right to a conference shall notify the department 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 persons shall be notified in writing within 90 days of the informal 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, and conduct.

1. If, after an informal fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit or registration, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a qualified organization or operator desires to request a hearing, it shall notify the department 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. Unless otherwise provided by law, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with § 2.2-4020 of the Code of Virginia, or at an informal fact-finding proceeding conducted pursuant to § 2.2-4019 of the Code of Virginia, the presiding officer may issue a default order in accordance with § 2.2-4020.2 of the Code of Virginia.

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 qualified organization or operator is located. If the parties agree, 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 or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department 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 commissioner's designee may represent the department in an informal fact-finding conference or at a hearing.

11VAC15-50-170. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or any officer or director of an operator shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of the Charitable Gaming Statutes or this chapter, including counterfeit poker chips or playing cards or mechanical poker equipment that appear to have been tampered with.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit or registration.

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 department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of an operator shall immediately notify the department upon being convicted of or pleading nolo contendere to a felony or a crime involving gambling or an action against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, any political subdivision thereof, or the District of Columbia.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or by any operator may result in the denial, suspension, or revocation of a permit or registration.

G. Any officer, director, or game manager of a qualified organization shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All qualified organizations permitted by the department or operators registered by the department shall display prominently a poster advising the public of a phone number where complaints relating to poker tournaments may be made. Such posters shall be in a format prescribed by the department.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (11VAC15-50)

~~[Annual Financial Report, Form 101 (eff. 2020)~~

~~Charitable Gaming Permit Application – New Applicants, Form 201-N (eff. 2020)~~

~~Charitable Gaming Permit Application – Renewal Applicants, Form 201-R (eff. 2020)~~

Annual Financial Report, Form 101 (rev. 3/21)

Charitable Gaming Permit Application – New Applicants, Form 201-N (rev. 3/21)

Charitable Gaming Permit Application – Renewal Applicants, Form 201-R (rev. 3/21)]

Destruction of Unused Charitable Gaming Supplies, Form 112 (rev. 3/2014)

Permit Amendment (rev. 8/2013)

~~[Quarterly Financial Report Form, Form 102 (eff. 2020)~~

Quarterly Financial Report Form, Form 102 (rev. 3/21)]

Report of Game Termination (rev. 7/2013)

~~[Texas Hold'em Game Operator Registration, Form 307 (eff. 2020)~~

~~Texas Hold'em Tournament Reconciliation Summary, Form 114 (eff. 2020)~~

Texas Hold'em Game Operator Registration, Form 307 (eff. 3/21)

Texas Hold'em Tournament Reconciliation Summary, Form 114 (eff. 3/21)

Texas Hold'em Poker Tournament Operator Registration – Personal Information Form, Form 307a (eff. 3/21)

Texas Hold'em Poker Tournament Operator's Surety Bond, Form 309 (eff. 3/21)]

DOCUMENTS INCORPORATED BY REFERENCE (11VAC15-50)

Poker Tournament Directors Association Rules, 2019, September 17, 2019, Poker Tournament Directors Association, <https://www.pokertda.com/>

Robert's Rules of Poker, Version 11, 2012, Robert Ciaffone

VA.R. Doc. No. R21-6520; Filed March 19, 2021

EXHIBIT D



CHAP PETERSEN & ASSOCIATES, PLC

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Won Y. Uh
Janice M. Jang^+
Chris T. Robertson+
Federico J. Zablah

April 27, 2021

Via First-Class Mail and E-Mail (Michael.Menefee@vdacs.virginia.gov)

VDACS
Charitable & Regulatory Programs
c/o Michael Menefee, Program Manager
102 Governor Street
Richmond, Virginia, 23219

Re: Request for Compliance with Va. Code § 18.2-340.25 in connection with Cheers' permit renewal application for Conducting and Operating Charitable Gaming, including Texas Hold'em Poker Tournaments

Dear Mr. Menefee:

Please be advised that our law firm represents Cheers ("Cheers"), a tax-exempt organization under section 501(c) of the Internal Revenue Code. This is a notice on behalf of Cheers requesting compliance with Virginia Code § 18.2-340.25, which, *inter alia*, required the Department to act upon Cheers completed amended permit application, for conducting charitable gaming, within 45 days of filing thereof.

On February 2, 2021, Cheers filed a completed application for an amended Charitable Gaming permit so that it be permitted to also conduct Texas Hold'em poker tournaments (the "Amended Charitable Gaming Permit Filing"). At the time of filing, Cheers was in compliance with all relevant laws and regulations, including the promulgated regulations. To date, no determination has been made by the Department on Cheers' Amended Charitable Gaming Permit Filing. *See* Va. Code § 18.2-340.25.

The Virginia Code "permits qualified organizations"—like Cheers—"to conduct raffles, bingo, network bingo, instant bingo games, and Texas Hold'em poker tournaments." *See* Va. Code § 18.2-340.22. Notably, those "qualified organizations" have already met the eligibility requirements to conduct Texas Hold'em poker tournaments. *See* 11VAC15-50-20 (organization eligibility requirements for conducting Texas Hold'em poker tournaments) (citing Va. Code § 18.2-340.24).

In light of the foregoing, I kindly request that a determination be made as to Cheers' Amended Charitable Gaming Permit Filing by the **close of business on Friday, April 30th, 2021**, before any further legal action is necessitated. Please be advised that Cheers is continually suffering damages and irreparable harm as a result of the noncompliance with the Code and reserves all legal rights.

Letter to Mr. Menefee
Page 2 of 2
April 27, 2021

Please do not hesitate to contact me with any questions or concerns. I look forward to your assistance and cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Ibnul A. Khan', written in a cursive style.

Ibnul A. Khan

/iak

cc: Cheers (via e-mail)
J. Chapman Petersen, Esq. (via e-mail)
Steven Skaist, Esq. (via e-mail)

EXHIBIT E

[REDACTED]

From: **Menefee, Michael** <michael.menefee@vdacs.virginia.gov>
Date: Mon, May 10, 2021, 4:03 PM
Subject: Virginia Charitable Gaming
To:

Thank you for submitting your application for a poker tournament permit or a poker tournament operator registration. The Virginia Department of Agriculture and Consumer Services' (VDACS) legal counsel has advised VDACS that, given the provisions of subdivision (D)(2) of Item 105 of the 2021 Appropriation Act, the Texas Hold'em Poker Tournament Regulations (11 VAC 15-50 et seq.) are not currently in effect. As such, VDACS will not issue any permits or registrations pursuant to the Texas Hold'em Poker Tournament Regulations prior to the effective date of the regulation. Consequently, your application will be returned to you via mail and any fees paid will be refunded.

-Michael Menefee
Program Manager
Office of Charitable & Regulatory Programs
Virginia Department of Agriculture & Consumer Services

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Michael Menefee
Program Manager, Office of Charitable & Regulatory Programs
Virginia Department of Agriculture & Consumer Services
102 Governor Street
Richmond, VA 23219
(804) 786-3983