

# Charitable Gaming Subcommittee

## LEGISLATIVE IDEAS

### Types of Organizations & Location

1. Redefine "organization" to track the Internal Revenue Code definitions.
  - a. The IRC lays out the type of charitable organizations that may participate in charitable gaming and to what extent such organizations may participate in gaming without jeopardizing their tax exempt status.
2. Only allow for charitable gaming to be played in social quarters by certain types of organizations—specifically, fraternal and veterans' organizations— whose tax exempt purposes include social or recreational activities (i.e., organizations that have legitimate "social quarters" per IRS guidelines).
  - a. **501(c)(8) -- fraternal beneficiary society, order, or association**

*To be exempt under Internal Revenue Code (IRC) section 501(c)(8), a fraternal beneficiary society, order, or association must meet the following requirements:*

1. It must have a fraternal purpose. An organization has a fraternal purpose if membership is based on a common tie or the pursuit of a common object. The organization must also have a substantial program of fraternal activities.
2. It must operate under the lodge system or for the exclusive benefit of the members of a fraternal organization itself operating under the lodge system. Operating under the lodge system requires, at a minimum, two active entities: (i) a parent organization; and (ii) a subordinate (called a lodge, branch, or the like) chartered by the parent and largely self-governing.
3. It must provide for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.
4. An organization that provides benefits to some, but not all, of its members may qualify for exemption so long as most of the members are eligible for benefits, and criteria for excluding certain members are reasonable.

**501(c)(10) – domestic fraternal society, order, or association**

*To be exempt under IRC 501(c)(10), a domestic fraternal society, order, or association must meet the following requirements:*

1. It must have a fraternal purpose. An organization has a fraternal purpose if membership is based on a common tie or the pursuit of a common object. The organization must also have a substantial program of fraternal activities.
2. It must operate under the lodge system. Operating under the lodge system requires, at a minimum, two active entities: (i) a parent organization; and (ii) a subordinate organization (called a lodge, branch, or the like) chartered by the parent and largely self-governing.
3. It must not provide for the payment of life, sick, accident, or other benefits to its members. The organization may arrange with insurance companies to provide optional insurance to its members without jeopardizing its exempt status.
4. It must devote its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.
5. It must be a domestic organization, that is, it must be organized in the United States.

**c. 501(c)(19) – a post or organization of past or present members of the United States Armed Forces, an auxiliary unit or society of such post or organization, or a trust or foundation for such post or organization**

*A veterans' post or organization must meet the following requirements to be exempt under section 501(c)(19):*

1. It must be organized in the United States or any of its possessions
2. At least 75 percent of its members must be past or present members of the United States Armed Forces
3. At least 97.5 percent of its members must be:
  - present or former members of the United States Armed Forces,
  - cadets (including only students in college or university ROTC programs or at Armed Services academies) or
  - spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to in the first or second bullet
4. It must be operated exclusively for one or more of the following purposes:
  - to promote the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community)
  - to assist disabled and needy war veterans and members of the United States Armed Forces and their dependents - and the widows and orphans of deceased veterans
  - to provide entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces
  - to carry on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors
  - to conduct programs for religious, charitable, scientific, literary or educational purposes

- to sponsor or participate in activities of a patriotic nature
  - to provide insurance benefits for members or their dependents or
  - to provide social and recreational activities for members
5. No part of its net earnings may inure to the benefit of any private shareholder or individual.

*An organization may be exempt under section 501(c)(19) as an auxiliary unit or society of a veterans' post or organization if it meets the following requirements:*

1. It is affiliated with, and organized in accordance with the bylaws and regulations of, a veterans' post or organization described above
2. At least 75 percent of its members are veterans, spouses of veterans, or related to a veteran within two degrees of consanguinity (i.e., grandparent, brother, sister, grandchild represent the most distant allowable relationships)
3. All members are either members of a veterans' post or organizations described above, or spouses of a member of such post or organization, or are related to a member of such post or organization within two degrees of consanguinity
4. No part of its net earning inures to the benefit of any private shareholder or individual.

*An organization may be exempt under section 501(c)(19) as a trust or foundation for a veterans' post or organization if it meets the following requirements:*

1. It is valid under local law and, if organized for charitable purposes, has a dissolution provision described in section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations
2. The corpus or income cannot be diverted or used other than to fund a veterans' post or organization for charitable purposes or as an insurance set-aside
3. The trust income is not unreasonably accumulated, and a substantial portion of the income is distributed to such veteran post or organization, or for exclusively religious, charitable, scientific, literary, educational or prevention of cruelty to children or animal purposes
4. It is organized exclusively for one or more of those purposes enumerated above for which a veterans' post or organization itself may be organized

***Note: For taxable years beginning on or before November 11, 2003, slightly different membership requirements apply under section 501(c)(19).***

- d. Define "member" and "guest" per the IRS guidelines (VDACS observation 1, see OSIG report p. 15). The IRS guidelines are stricter than current Virginia law. §§ 18.2-340.26:1 and 18.2-340.28:1 of the Code of Virginia use the terms "member" and "guest", but unlike the IRS guidelines, they don't include language limiting the scope of the definitions.
  - i. **Member**

- ii. **Guest:** (see [“IRC 501\(c\)\(8\) Fraternal Beneficiary Societies and IRC 501\(c\)\(10\) Domestic Fraternal Societies.”](#) p. 17)
  - 1. A fraternal organization may provide social and recreational activities to its members. Guests of members may also participate in the organization’s activities or make use of its facilities so long as the guest is being entertained by the member. However, a non-member is not being “entertained” merely because he or she accompanies a member. When non-member “guests” spend their own funds to participate in gambling activities operated by fraternal organizations, they are not being entertained by the member. If a non-member incurs a charge to participate in a social or recreational event or to make use of a social or recreational facility, the nonmember is considered to be entertained by a member only if the member pays the charge.
- e. Social quarters must be located on the premises where the organization regularly conducts business. (VDACS observations 3 and 4, see OSIG report p. 15)
- f. Require all organizations, including fraternal and veterans organizations, to report, and pay associated fees on, all electronic pull tab and social quarters receipts (VDACS observation 5, see OSIG report p. 15; OSIG Recommendation 12, see OSIG report p. 34)
  - i. Should current licensing fees be increased in order to allocate more money towards enforcement measures? What do other states charge?

## Conflicts of Interest

- 1. Change the Charitable Gaming Board from a policy board to an advisory board (OSIG recommendation 5, see OSIG report p. 23). This would align the Charitable Gaming Board with other gaming boards that are advisory, such as the Lottery Board.
  - a. Definition of "advisory" and "policy" found in [§ 2.2-2100](#).
    - i. **Advisory:** A board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice.



## Percentage of Gross Receipts

1. The current percentage set by regulations is 10%, but does not include proceeds from instant bingo, electronic pull tabs, and seal cards played in "social quarters." This amounts to an exorbitant amount of unreported revenue.
2. **OPTIONS**
  - a. Change from a percentage of gross receipts to a percentage of net receipts - or percentage of net of what's left after prizes are paid out (50% of that net for charitable purposes.)
  - b. Require contracts between operators and charities to stipulate that a specific percentage of gross receipts (50%, as is common practice currently, or 60%) go the charity
  - c. Allow VDACS to set percentage of gross (or net) receipts in the regulations

## Texas Hold'em

See OSIG report, Appendix II, p. 44

1. Amend regulations to clarify that charitable organizations can only conduct Texas Hold'em tournaments—not cash games.
2. Require charitable organizations to operate tournaments themselves **OR** allow charitable organizations to utilize third-party operators for tournaments, but operators must conduct tournaments on the charitable organization's premises in their social quarters.
  - a. REGARDLESS, of which option is chosen → give VDACS regulatory oversight of landlords and/or third-party operators (OSIG recommendations 2 and 4, see OSIG report p. 21)

## Enforcement, Training and Penalties

1. Increase resources for enforcement (OSIG recommendations 10 and 11, see OSIG report p. 32)
  - a. This would also lessen the amount of time spent on the appeals process.
  - b. Request VDACS to indicate how much additional resources—in terms of FTEs and additional appropriated funds—the agency needs for appropriate enforcement
2. Require display of permit, which must show the number of devices approved by VDACS for that location.

- a. Should the permit display the allowable number of devices or the number currently present on the premises? Decals on each machine?
3. Budget amendment to allocate money to Commonwealth Attorneys and law-enforcement for training and enforcement purposes
  - a. To allow for better communication across agencies
  - b. Maybe create a state position for an "Illegal Gaming Coordinator"
4. Create a tip line for illegal gaming with reward money.
5. Create a study group or JLARC to study creation of an overarching Gaming or Gambling Commission to put ALL gaming under one Board (policy or advisory?). This would include horse racing, Lottery, casino games, on-line sports and horse racing book, charitable gaming, etc...