

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF CHARITABLE GAMING
Statutory Authority: 28 Delaware Code, Section 1507 (28 Del.C. §1507)
10 DE Admin. Code 103

FINAL

ORDER

103 Regulations Governing Charitable Gambling Other Than Raffles

On May 1, 2016 the Delaware Board of Charitable Gaming published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 19, Issue 11. The notice indicated that written comments would be accepted by the Board, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 25, 2016 at a regularly scheduled meeting of the Board of Charitable Gaming to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1- Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2- Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony presented at the public hearing. No written comments were received by the Board.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments on the proposed amendments to the Board's regulations in writing and by testimony at the public hearing.
2. There were no public comments provided to the Board during the written public comment periods.
3. Pursuant to 28 Del.C. §1507 the Board has the statutory authority to promulgate rules and regulations to implement or clarify specific statutory sections of its statute.
4. Having received no public comments, the Board finds no reason not to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 28 Del.C. §1507 and for the reasons set forth above, the Board does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on May 1, 2016. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(g).

The new regulations are attached hereto as Exhibit B.

SO ORDERED this 22nd day of June, 2016.

DELAWARE BOARD OF CHARITABLE GAMING

Janet Williams-Coger, Chairperson (absent)

James Ascione

Francis Gant

Richard MacDonald

S. Jay Mervine

103 Regulations Governing Charitable ~~Gambling~~ Gaming Other Than Raffles

1.0 Definitions

"Board" The Delaware Gaming Control Board.

"Charitable Gaming" Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board's Regulations for Raffles.

“Charitable gaming vendor” is a term which the Board may use to describe a “third party vendor” as that term appears in Title 28 of the **Delaware Code**. It is an entity licensed to do business in Delaware which is in the business of assisting charitable organizations in conducting gaming events through leasing of premises for the events, providing personnel or equipment to help conduct events or providing other assistance which helps the organization to provide the event.

“Function” is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

“Game” shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

“Gross Receipts” means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

“Instant Bingo” shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

“Net Proceeds” is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

“Officer” as used in these regulations includes owners, directors, partners, members, investors, managers, shareholders or any other person involved in the operation of the business of a charitable gaming vendor. All such persons must undergo the criminal background checks and all other requirements.

“Sponsoring Organization” Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

2 DE Reg. 1224 (01/01/99)

15 DE Reg. 886 (12/01/11)

16 DE Reg. 219 (08/01/12)

2.0 Licensing List Required To Be Kept: Membership List

Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

3.0 Conduct of Games

3.1 Workers.

3.1.1 **Member in Charge.** Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he or she is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license. Neither the member-in-charge nor his or her designee may be employed by or in any way assist a third party vendor in performing its duties during the Function.

3.1.2 **List of Workers.** A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

3.1.3 **Bona Fide Member.** For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:

3.1.3.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,

3.1.3.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,

- 3.1.3.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,
- 3.1.3.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,
- 3.1.3.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,
- 3.1.3.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,
- 3.1.3.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.
- 3.1.4 Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.
- 3.1.5 Member Responsible for Gross Receipts. The member responsible for gross receipts shall not be employed by or perform any duties for a third party vendor during the function.
- 3.1.6 No unreasonable commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. Organizations may contract with third party vendors to conduct or assist in conducting the Function, and may agree to pay reasonable compensation to the vendor. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No tip cups may be placed upon tables, nor may cups intended for donations to the charitable organization be placed upon the table. Donations may be made to the charitable organization but a container to receive such donations must be placed near the entrance to the event and must be accessible to the member in charge. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

13 DE Reg. 107 (07/01/09)

13 DE Reg. 1355 (04/01/10)

13 DE Reg. 1580 (06/01/10)

16 DE Reg. 219 (08/01/12)

4.0 Limitation of Participation of Certain Persons

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

5.0 Equipment and Premises

- 5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or leased or borrowed from a licensed third party vendor. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.
- 5.2 Equipment. Equipment used in the conduct of a charitable gaming event must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.
- 5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

16 DE Reg. 219 (08/01/12)

6.0 Operation of Games

- 6.1 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.
- 6.2 Monitoring of Poker Tables. An association which has obtained the proper license or permit to conduct poker shall assign one monitor during the playing of poker.
- 6.3 In charitable gaming other than bingo and Texas Hold 'Em, there shall be no limit on the amount a person may bet or win, except that no person may lose more than \$150 in a single day or event. This limit applies to the entire event approved to begin on a certain day. If an event continues past midnight, no new limit shall apply. Any person who has lost \$150 during the event shall not be permitted to gamble again after midnight.

11 DE Reg. 516 (10/01/07)

12 DE Reg. 357 (09/01/08)

13 DE Reg. 107 (07/01/09)

16 DE Reg. 219 (08/01/12)

7.0 Prohibited Acts

- 7.1 Wagering Among Participants Not Permitted. No Sponsoring organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly administered by the Sponsoring organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.
- 7.2 Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring organization except for the receipt of checks in the exact amount for any admission charge.
- 7.3 Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.
- 7.4 Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.
- 7.5 Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than ~~one Function~~ six Functions in any single calendar month. Charitable games shall not commence prior to 12:00 p.m. The operation of a Function shall be limited to six (6) consecutive hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time.
- 8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

2 DE Reg. 1224 (1/1/99)

13 DE Reg. 1355 (04/01/10)

17 DE Reg. 1094 (05/01/14)

9.0 Record Keeping

- 9.1 Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.
- 9.2 Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring organization required by subsection (a).
- 9.3 Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.
- 9.4 Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

10.0 Violations of Regulations

Failure to comply with any of the Regulations shall be deemed a violation of 28 **Del.C.** Ch. 15.

11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on a form approved by the Board. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.
 - 11.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.
- 11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.
- 11.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 11.4 The Board may issue a license only after it determines that:
 - 11.4.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and
 - 11.4.2 The person or persons who intend to conduct the games are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
 - 11.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
 - 11.4.4 No unreasonable salary, compensation or reward whatever will be paid or given to any person under whom the game is conducted.
- 11.5 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.
- 11.6 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

2 DE Reg. 1224 (1/1/99)

12 DE Reg. 357 (09/01/08)

13 DE Reg. 107 (07/01/09)

13 DE Reg. 1355 (04/01/10)

12.0 Reports After the Function

- 12.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by Title 28 of the **Delaware Code**.
- 12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.

- 12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

2 DE Reg. 1224 (1/1/99)

11 DE Reg. 516 (10/01/07)

13 DE Reg. 107 (07/01/09)

16 DE Reg. 219 (08/01/12)

13.0 Suspension and Revocation of Licenses

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

2 DE Reg. 1224 (1/1/99)

12 DE Reg. 357 (09/01/08)

18 DE Reg. 157 (08/01/14)

14.0 Ownership

If ownership of a charitable gaming vendor changes, the new owner or owners must submit a valid Delaware business license to the Board immediately. In addition, if a charitable organization was to conduct an event using that third party vendor, the organization must inform the Board that it is aware of the change in ownership and whether it will continue with the event with the new owners.

16 DE Reg. 219 (08/01/12)

15.0 Licensure

- 15.1 A charitable gaming vendor must hold a valid business license issued by the State of Delaware, which must remain current. The vendor must inform the Board within ten days if the license lapses. The Board may suspend or revoke a vendor's license for failure to maintain a current Delaware business license or for failing to inform the Board of the loss of a business license.
- 15.2 The vendor also must be licensed by the Board as a charitable gaming vendor. To become licensed, the vendor shall file an application prepared by the Board or by the Division of Professional Regulation ("Division"). The application must be signed by all officers of the vendor.
- 15.3 Investigators assigned to the Division will conduct an investigation to determine the suitability of the applicant for licensure. The investigator will provide his or her recommendation of suitability of each applicant to the Delaware Board of Charitable Gaming. The Division's investigators may access the state and federal criminal history databases for the purpose of reviewing the criminal history of any individual applicant or officer of an applicant.
- 15.4 All officers of such vendors shall be required to undergo criminal background checks as a requirement for licensure. The applicant's officers must contact the State Bureau of Identification ("Bureau") to make arrangements for fingerprint processing. The officers must complete a fingerprint card and form with the necessary personal information and sign an Authorization for Release of Information form to release criminal history records to the Division of Professional Regulation ("Division") and the Delaware Board of Charitable Gaming. At the time of processing the officers must show proof of official identification to complete the criminal history request. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the Bureau, and the officers shall make that payment directly to that agency. Certified copies of the criminal history record shall be forwarded to the Division. The Bureau shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Investigation. The Bureau shall forward the results of these federal record checks to the attention of the

Division, along with the results of a report of the individual's entire criminal history record from the Bureau or a statement from the Bureau that its Central Repository contains no such information relating to that person, in a confidential manner. The Division may provide the individual officer with a copy of the criminal history records upon written request. The officer shall have the opportunity to respond to the Division regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) days of the person's receipt of the criminal background information from the Division.

- 15.5 In making the determination of suitability for licensure, the Board of Charitable Gaming shall consider the background of each individual applicant or officer of the applicant. The licensure requirement shall include the satisfaction of such security, fitness and background standards as the Board may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of charitable gaming. It is specifically provided that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or any time thereafter shall be deemed unfit, and if such person is an officer of an applicant, the applicant shall be deemed unfit. The Board shall also consider the applicant's or the officer's truthfulness in disclosing requested information, particularly in regard to the criminal history.
- 15.6 The Board shall communicate the results of the determination of suitability in writing to the applicant within sixty (60) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Board determines that an applicant has satisfied the licensing requirements, the applicant will be issued a license. If the Board determines that an applicant is not suitable or has not satisfied the licensing requirements, the licensee shall be entitled to a hearing before the Board to be heard upon the qualifications of the applicant and the merits of the application. The burden of proof shall be on the applicant.
- 15.7 All records pertaining to criminal background checks and suitability determinations shall be maintained in a confidential manner including, but not limited to, the following:
 - 15.7.1 Access to criminal background check records, letters of reference accompanying out-of-state criminal background checks and determination of suitability of applicants shall be limited to the Board and designated personnel within the Division;
 - 15.7.2 All such records shall be kept in locked cabinets or as digital files; and
 - 15.7.3 No information from such records shall be released without the signed release of the individual applicant or officer.
- 15.8 The license shall expire and be renewable every three (3) years. Prior to expiration, each licensee shall contact the Division of Professional Regulation and submit a new and updated license application form and undergo an investigation as in the original licensing.
- 15.9 Officers of licensees shall notify the Division of Professional Regulation no later than three (3) days after an arrest for any crime, excluding minor traffic violations. The Division will forward this information to the Board and the Board may proceed to determine the person's continuing suitability as a licensee, and may suspend the license until the criminal charges have been resolved.

15 DE Reg. 886 (12/01/11)

16 DE Reg. 219 (08/01/12)

18 DE Reg. 157 (08/01/14)

16.0 Maximum Number of Permissible Events

- 16.1 Under the terms of 28 **Del.C.** §§1526(a) and 1562 and 10 **DE Admin. Code** 103 Rule 8.1, organizations are limited in the number of bingo, Texas Hold 'Em and charitable gaming events which they may conduct. The Board has held that a Delaware charitable organization that establishes a subsidiary group or groups, such as an auxiliary which does not have its own separate Employee Identification Number or Federal Identification Number from the Internal Revenue Service, will be required to share its limited number of permissible events with the subsidiary group. For example, since five (5) Texas Hold 'Em tournaments are permitted in one year under 28 **Del.C.** §1562, the main group and the subsidiary group or groups may have a total of five (5) tournaments between or among them, rather than each entity being permitted to have up to five tournaments.
- 16.2 If the subsidiary group obtains its own separate Employer Identification Number or federal identification number from the Internal Revenue Service, then the subsidiary group may itself have the maximum number of events.
- 16.3 However, the Board views national charitable organizations with Delaware affiliates differently. If there are several affiliates of a national charitable organization in Delaware, and each is independent of the others, each affiliate may seek up to the maximum number of permissible events through use of the notice of charitable standing granted to the national organization, provided the national organization confirms that the affiliate has

its permission to do so. Each Delaware affiliate of a national charitable organization may request permission to conduct up to the maximum number of permissible events.

15 DE Reg. 886 (12/01/11)

16 DE Reg. 219 (08/01/12)

17.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

15 DE Reg. 886 (12/01/11)

16 DE Reg. 219 (08/01/12)

20 DE Reg. 123 (08/01/16) (Final)