~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 13, 2009

**S. 535**

Introduced by Senators McConnell, Mulvaney, Ford, Land, Knotts and Davis

S. Printed 5/13/09--S. [SEC 5/14/09 1:03 PM]

Read the first time March 5, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 535) to amend Section 16‑19‑40, Code of Laws of South Carolina, 1976, relating to unlawful games and betting, so as to clarify the activities that are unlawful, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, lines 7-40, by striking these in their entirety and inserting the following:

/ (A)(1) As used in this section, ‘plays for gambling purposes’ shall mean playing any game or gaming scheme where a person risks, in exchange for the promise of reward, any money or other thing of value on the outcome of the game or gaming scheme, and the outcome, though skill may be a factor, is predominantly determined by chance.

(2) If a person plays for gambling purposes at a tavern, bar, restaurant, inn, or store that sells alcoholic liquors, wine, or beer or in a house, barn, kitchen, stable, or other outlying building, street, highway, open wood, race field, or open place used as a place of gambling at:

(a) a game with cards or dice;

(b) a gaming table, including, but not limited to, ones commonly called A. B. C. or E. O, a roulette table, a roley‑poley table, a rouge et noir table, a faro bank, or other table or bank of the same or similar kind labeled under any denomination; or

(c) a machine or device licensed pursuant to Section 12‑21‑2720 and used for gambling purposes, then the individual, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.

(B) A person who is present, places bets, or bets on the side or on the hands of anyone who plays for gambling purposes pursuant to the provisions of this chapter shall, upon conviction, be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.

(C) A person who keeps a tavern, inn, retail store, public place, or house used for gambling purposes, or any other building of this kind, pursuant to the provisions of this chapter shall, upon conviction:

(1) for a first offense, be fined not less than two hundred dollars and not more than five hundred dollars, or imprisoned for not more than thirty days, or both; and

(2) for a second or subsequent offense, be fined not more than two thousand dollars, or imprisoned for not more than one year, or both.

As used in this section, a place that is ‘used for gambling purposes’ shall mean any place in which a person risks, in exchange for the promise of reward, any money or other thing of value on a game or gaming scheme, the outcome of which, though skill may be a factor, is predominantly determined by chance.

(D) Games of cards or dice, billiards, bowls, backgammon, chess, draughts, or whist, when there is no betting and when there are no awards for cash, prizes, additional play, or anything of value are not unlawful under this chapter.

(E) Gambling in a private home where no house player, house bank, or house odds exist and where the house receives no part of any of the money or other thing of value that is risked or wagered in the gambling in the private home is social gambling and is not unlawful under this chapter. /

Amend the bill further, as and if amended, page 2, lines 41-43, page 3, lines 1-42, and page 4, lines 1-10 by striking those lines in their entirety and inserting the following:

/ (F) For purposes of this section~~,~~ :

(1) ‘Adjusted gross receipts’ mean gross receipts less all cash prizes and the amount paid for merchandise prizes purchased.

(2) ‘Charitable gaming supplies and equipment’ means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this article. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply.

(3) ‘Charitable organization’ means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes.

(4) ‘Door prize’ or ‘prize’ means a prize awarded to a person based solely upon the person’s attendance at an event or the payment of something of value for a ticket to attend an event. Cash prizes for special limited charity fundraising events must be limited to no more than five thousand dollars.

(5) ‘Gross receipts’ mean all moneys collected or received from the conduct of charitable gaming.

(6) ‘Net receipts’ mean adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this section.

(7) ‘Operate’, ‘operated’, or ‘operating’ means the conduct, direction, supervision, management, operation, control, or guidance or activity.

(8) ‘Person’ means a natural person, partnership, association, company, corporation, or organization, or a manager, agent, servant, officer, or employee thereof.

(9) ‘Special limited charity game’ means games involving live individuals playing roulette, blackjack, poker, baccarat, or other card games, dice games and must not include events with any electronic device or machine, slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races.

(10) ‘Special limited charity fundraising event’ means any type of charity fundraising event, commonly known as and operated as a ‘casino night’, ‘Las Vegas night’, or ‘Monte Carlo night’, at which the predominant number or types of games offered for play are special limited charity games.

(11) ‘Year’ means calendar year.

(G) A charitable organization is allowed to conduct a special limited charity fundraising event, defined for the purposes of this bill, as in accordance with the provisions of this article if the charitable organization:

(1) is recognized by the South Carolina Department of Revenue and the United States Internal Revenue Service as exempt from federal and state income taxation;

(2) has been in continuous existence and operation in the State for a period of not less than one year from the date of the first raffle or special limited charity fundraising event; and

(3) is registered with the Secretary of State pursuant to the requirements of Chapter 56, Title 33. In the event that the charitable organization is unable to provide the Secretary of State with documents that are required by such chapter, the charitable organization must provide sufficient evidence concerning the structure and operation of the organization to enable the agency to determine whether the applicant meets the charitable, religious, fraternal, or nonprofit criteria. Sufficient evidence includes submission of a document attesting to the stated purpose of the organization, names of board members or organizers of the organization, and the formation date of the organization.

(4) The requirement to register for the purpose of conducting special limited charity fundraising events with the Secretary of State shall apply to any and all charitable organizations that intend to conduct a special limited charity fundraising event in this State, including those organizations that are exempt or not required to follow the registration requirements of Chapter 56, Title 33.

(5) Registrations for special limited charity fundraising events shall expire twelve months from the date of issuance. Organizations that meet the requirements of Section 16‑19‑300(3) shall submit an annual special limited charity fundraising event form along with a fee of twenty-five dollars to the Office of the Secretary of State. This registration form and fee shall cover all allowable special limited charity fundraising events for the year. Proceeds from the fees shall be retained by the Secretary of State for enforcement of these provisions.

(6) Charitable organizations registering with the Secretary of State shall be subject to investigation and other actions by the Secretary of State, and subject to all penalties contained in Chapter 56, Title 33. The Secretary of State’s Office shall refer violations to law enforcement for criminal prosecution pursuant to the provisions of this article.

(7) Charitable organizations may advertise special limited charity fundraising events.

(8) Charitable organizations are limited to two special limited charity fundraising events per year. Each affiliate or subsidiary of a charitable organization that otherwise qualifies pursuant to the requirements of this article and shares a Federal Employer’s identification Number (EIN) with the parent charitable organization shall be entitled to hold two special limited charity fundraising events per year.

(H) No less than ninety percent of the net receipts of a special limited charity fundraising event authorized pursuant to this section must be used for the charitable, religious, or philanthropic purposes of the charitable organization. No gross receipts, expenses, or net receipts of a special limited charity fundraising event shall be used to influence the outcome of a political office or to influence the outcome of an issue pending before a political body.

(I) No charitable organization shall enter into a contract with any person to have that person operate special limited charity fundraising events on behalf of the charitable organization.

(J) A charitable organization shall not lend its name nor allow its identity to be used by any person in the operating or advertising of a special limited charity fundraising event in which the charitable organization is not directly and solely operating the special limited charity fundraising event.

(K) No person shall pay consulting fees or something of value to any person for any services performed in relation to the operation or conduct of a special limited charity fundraising event.

(L) A special limited charity fundraising event shall be conducted only by an authorized charitable organization through its bona fide officers and members who volunteer their time and receive no compensation for their services. Food and beverages served to and consumed by volunteers during a special limited charity fundraising event is not compensation.

(M) A charitable organization shall not conduct special limited charity fundraising events through any agent or third party. Rental of special limited charity game equipment is not considered conducting a raffle or special limited charity fundraising event.

(N) The provisions of this section are not intended and shall not be construed to allow the play of special limited charity games through any electronic device or machine.

(O) Expenses that are reasonable and necessary to special limited charity fundraising events as authorized by this section are allowable and include expenses incurred for:

(1) advertising, including the cost of printing raffle and special limited charity fundraising event gift certificates;

(2) food and beverage costs;

(3) rental of equipment and hiring a person to operate the equipment during the limited time period allowed for raffles or special limited charity fundraising games;

(4) repairs to premises and equipment;

(5) door prizes or prizes;

(6) stated rental or insurance expenses; and

(7) bookkeeping or accounting services.

(P) A charitable organization may conduct or participate in a special limited charity fundraising event that does not exceed two events a year per organization and at which each event does not continue for more than six consecutive hours. Special limited charity fundraising events may include special limited charity games, if the following requirements are met:

(1) the charitable organization must meet all of the requirements of subsection (G);

(2) no merchandize prize shall be purchased or offered that exceeds the gross receipts collected by the applicant, and no cash prize shall exceed five thousand dollars; and

(3) no less than ninety per cent of the net receipts must be applied to the charitable, religious, fraternal, or nonprofit purposes of the applicant, and all of the restrictions in this chapter shall apply to any expenses, charges, fees, or deductions to manufacturers, distributors, or persons conducting the special limited charity fundraising event.

(Q)(1) Each charitable organization conducting a special limited charity fundraising event shall keep records of its gross receipts, expenses, adjusted gross receipts, and net receipts for each single special limited charity fundraising event at which winning chances are determined. All deductions from gross receipts for each single special limited charity fundraising event shall be documented with receipts or other records indicating the amount, a description of the purchased item or service or other reason for the deduction, and the recipient. The distribution of net receipts shall be itemized as to payee, purpose, amount, and date of payment.

(2) Each charitable organization conducting special limited charity fundraising events shall report promptly after the conclusion of each special limited charity fundraising event to its membership, its gross receipts, expenses, and net proceeds from special limited charity fundraising events and the distribution of net proceeds itemized as required in this section.

(3) Records required by this section shall be preserved for three years, and organizations shall make available their records relating to operation of special limited charity fundraising events for public inspection at reasonable times and places.

(R) No person under the age of eighteen years may promote, conduct, operate, or work at a special limited charity fundraising event, and no person under the age of sixteen years may sell or promote the sale of any special limited charity fundraising event tickets, nor shall any sponsoring organization permit any person under the age of eighteen to so promote, conduct, or operate any special limited charity fundraising event or any person under the age of sixteen to sell or promote the sale of such tickets.

(S) The officers or directors of an organization who violate the provisions of a special limited charity fundraising event shall, upon conviction, be fined not less than two hundred dollars and not more than five hundred dollars, or imprisoned for not more than thirty days, or both. Further, an organization convicted of a violation pursuant to this section shall be prohibited from applying for a special limited charity fundraising event until no less than twenty‑four months have passed since the date of the conviction.” /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

See Below

**EXPLANATION OF IMPACT:**

The Department of Revenue estimates the first year impact of this bill at $226,607. The department reports it currently has 4.0 FTEs to regulate Bingo and would need 2.0 additional FTEs, a Program Assistant and an Auditor III, to meet the requirements of the bill. The department estimates $77,265 for salaries and fringe benefits, $8,190 for travel, and $36,513 for other operating expenses. Non-recurring programming costs for new computer system designs and modifications to the electronic deposit system are estimated at $104,639. Recurring annual costs can be estimated at $121,968.

The bill specifies that there is a thirty dollar application fee. However, the bill does not specify if the revenue derived from this fee is to be retained by the Department of Revenue or remitted to the General Fund of the State. Any funds retained by the departments would reduce the need for state general funds to implement the requirements of this bill.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this or any other bill.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 16‑19‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNLAWFUL GAMES AND BETTING, SO AS TO CLARIFY THE ACTIVITIES THAT ARE UNLAWFUL GAMBLING, TO AMEND THE PENALTIES TO BE THE SAME OR SIMILAR, AND TO CREATE AN EXCEPTION FOR SOCIAL GAMING AND FOR CASINO NIGHT EVENTS CONDUCTED AS A FUNDRAISING ACTIVITY OF LIMITED DURATION BY A NONPROFIT ORGANIZATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑19‑40 of the 1976 Code is amended to read:

“Section 16‑19‑40. ~~If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or in any house used as a place of gaming, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) any game with cards or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley‑poley table, (d) rouge et noir, (e) any faro bank (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) any machine or device licensed pursuant to Section 12‑21‑2720 and used for gambling purposes, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts, or whist or shall bet on the sides or hands of such as do game, upon being convicted thereof, before any magistrate, shall be imprisoned for a period of not over thirty days or fined not over one hundred dollars, and every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming or such other house shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months and forfeit a sum not exceeding two thousand dollars, for each and every offense.~~

(A) If a person plays for gambling purposes at a tavern, bar, restaurant, inn, or store that sells alcoholic liquors, wine, or beer or in a house, barn, kitchen, stable, or other outlying building, street, highway, open wood, race field, or open place used as a place of gambling at:

(1) a game with cards or dice;

(2) a gaming table, including, but not limited to, ones commonly called A. B. C. or E. O, a roulette table, a roley‑poley table, a rouge et noir table, a faro bank, or other table or bank of the same or similar kind labeled under any denomination; or

(3) a machine or device licensed pursuant to Section 12‑21‑2720 and used for gambling purposes,

then the individual, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.

(B) A person who is present, places bets, or bets on the side or on the hands of anyone who plays for gambling purposes pursuant to the provisions of subsection (A) shall, upon conviction, be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.

(C) A person who keeps a tavern, inn, retail store, public place, or house used for gambling purposes, or any other building of this kind, pursuant to the provisions of subsection (A) shall, upon conviction, be fined not less than two hundred dollars and not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

(D) Games of cards or dice, billiards, bowls, backgammon, chess, draughts, or whist, when there is no betting and when there are no awards for cash, prizes, or additional play, are exempted from the provisions of subsection (A).

(E) Gambling in a private home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game is social gambling and is an affirmative defense to the provisions of subsection (A).

(F) A charitable, religious, fraternal, or other nonprofit organization that is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) because it is organized and operated exclusively for charitable, religious, fraternal, or nonprofit purposes may conduct or participate in a casino night fundraising event of limited duration during which wagers may be made in gambling activities, but shall not include events with slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races, if the following requirements are met:

(1) the qualifying organization must apply to the Department of Revenue for a casino night permit on a form prescribed and furnished by the Department of Revenue, which shall require:

(a) the name and address of the applicant;

(b) the name and address of the applicant’s officers or directors;

(c) the location, date, and the time at which the applicant will conduct the casino night;

(d) the ticket price per person, which shall not exceed one hundred dollars;

(e) sufficient evidence concerning the structure and operation of the organization to enable the department to determine whether the applicant meets the charitable, religious, fraternal, or nonprofit criteria; and

(f) other relevant information requested by the department;

(2) an application fee of thirty dollars must accompany the application;

(3) no merchandize prize shall be purchased and no cash prize shall be offered that exceeds the gross receipts collected by the applicant;

(4) all net receipts must be applied to the charitable, religious, fraternal, or nonprofit purposes of the applicant, and no expenses, charges, fees, or deductions for manufacturers, distributors, or persons conducting the casino night event shall be authorized; and

(5) the applicant has no pending investigations or convictions pursuant to this section.

(G) The officers or directors of an organization who violate the provisions of a casino night event shall, upon conviction, be fined not less than two hundred dollars and not more than five hundred dollars, or imprisoned for not more than thirty days, or both. Further, an organization convicted of a violation pursuant to this section shall be prohibited from applying for a casino night event until no less than twenty-four months have passed since the date of the conviction.

(H) For purposes of this section:

(1) ‘Gross receipts’ means all moneys collected or received from the conduct of the casino night event;

(2) ‘Adjusted gross receipts’ means gross receipts less all cash prizes and purchase prices for merchandise prizes; and

(3) ‘Net receipts’ means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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