RECALLED

May 23, 2012

**S. 255**

Introduced by Senators Cleary, McConnell, Hutto, Rose, Ford and Knotts

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Read the first time February 10, 2011.

**A** **BILL**

TO AMEND TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 57, SO AS TO AUTHORIZE QUALIFIED RELIGIOUS, CHARITABLE, EDUCATIONAL, AND OTHER ELEEMOSYNARY ORGANIZATIONS TO OPERATE AND CONDUCT RAFFLES AND CASINO NIGHT CHARITY GAMES THROUGH REGISTRATION WITH THE SOUTH CAROLINA SECRETARY OF STATE, TO PROVIDE STANDARDS FOR THESE EVENTS; TO REQUIRE PROCEEDS TO BE USED FOR RELIGIOUS, CHARITABLE, EDUCATIONAL, OR OTHER ELEEMOSYNARY PURPOSES; AND TO PROVIDE PENALTIES FOR VIOLATIONS.

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

SECTION 1. Title 33 of the 1976 Code is amended by adding:

“CHAPTER 57

Charitable Raffles

Section 33‑57‑100. (A) A lottery or raffle of any type whatsoever is unlawful unless it is authorized by the following:

(1) Chapter 150, Title 59, the Education Lottery;

(2) Article 24, Chapter 21, Title 12, Charitable Bingo; or

(3) Chapter 57, Title 33, Charitable Raffles.

(B) It is the intent of the General Assembly that only qualified tax‑exempt entities organized for religious, charitable, educational, philanthropic, or eleemosynary purposes shall operate and conduct raffles as authorized by this chapter.

(C)(1) Nothing in this chapter may be construed to allow electronic gambling devices or machines of any types, slot machines, video poker or similar electronic play devices, or to change or alter in any manner the prohibitions regarding video poker or similar electronic play devices in Chapter 21, Title 12 and Chapter 19, Title 16.

(2) No person may conduct a fundraising event commonly known and operated as a ‘casino night’, ‘Las Vegas night’, or ‘Monte Carlo night’ involving live individuals playing roulette, blackjack, poker, baccarat, or other card games, or dice games, unless the event is conducted only for entertainment purposes and no prizes, financial rewards, or incentives are received by players. No casino or casino games, except as otherwise authorized herein, are lawful.

(3) No events with an electronic device or machine, slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races are authorized.

(D) Except for raffles conducted by the South Carolina Lottery Commission pursuant to Chapter 150, Title 59 or Charitable Bingo authorized by Article 24, Chapter 21, the provisions of this chapter provide the sole means by which activities associated with conducting raffles are authorized. The provisions of this chapter must be narrowly construed to ensure that tax‑exempt entities conducting a charitable raffle pursuant to this chapter are in strict compliance with the requirements of this chapter.

Section 33‑57‑110. For purposes of this chapter:

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

(2) ‘Charitable organization’ means a person or organization that is or holds itself out to be established for a religious, benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety.

(3) ‘Charity gaming supplies and equipment’ means any material, device, apparatus, or paraphernalia customarily used in the conduct of raffles, including raffle tickets, and other apparatus or paraphernalia used in conducting raffles subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the raffle, such as pencils, playing cards, or other supplies that may be purchased or leased from normal sources of supply.

(4) ‘Fifty‑fifty raffle’ means a raffle conducted by a charitable organization qualified to operate raffles pursuant to Section 33‑57‑120 and the proceeds collected by the sale of the raffle tickets are split evenly between the prize winner and the charitable organization after the raffle drawing.

(5) ‘Gross receipts’ means all funds collected or received from the conduct of raffles.

(6) ‘Net receipts’ means adjusted gross receipts less all expenses, charges, fees, and deductions that are authorized under this chapter. Payment of unauthorized expenses, charges, fees, and deductions from the gross receipts is a violation of this chapter.

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

(8) ‘Person’ means an individual, an organization, a trust, a foundation, a group, an association, a partnership, a corporation, a society, any other private entity, or a combination of them, or a manager, agent, servant, officer, or employee thereof.

(9) ‘Raffle’ means a game of chance in which a participant is required to pay something of value for a ticket for a chance to win a prize, with the winner to be determined by a random drawing or similar process whereby all entries have an equal chance of winning.

(10) ‘Secretary’ means the Office of the Secretary of State.

(11) ‘Year’ means a twelve‑month period from January first to December thirty‑first.

Section 33‑57‑120. (A) A charitable organization is qualified to conduct raffles in accordance with the provisions of this chapter 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 pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), 501(d), or 509(a); or is an educational institution, as defined in Chapter 56, Title 33; and

(2) has been in continuous existence and operation in the State for a period of not less than five years prior to the date of the first raffle; and

(3) is registered with the secretary pursuant to the requirements of Chapter 56, Title 33. In the event that a charitable organization meets the requirements of items (1) and (2) of this subsection, but is not registered with the secretary pursuant to Chapter 56, Title 33, or is unable to provide the secretary with documents that are required by Chapter 56, Title 33, the charitable organization must provide sufficient evidence concerning the structure and operation of the organization to enable the secretary to determine whether the applicant meets the charitable, religious, education, patriotic, or fraternal criteria required for charitable raffle authorization. Indicia of sufficient evidence includes, but is not limited to, the 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.

(B)(1) The requirement to register for the purpose of conducting raffles with the secretary shall apply to any and all charitable organizations that intend to conduct a raffle in this State, including those organizations that are exempt from or not required to follow the registration requirements of Chapter 56, Title 33.

(2) An exemption from registration for the purpose of conducting raffles is authorized for raffles conducted by a charitable organization where a non‑cash prize is donated for the charitable raffle and the total value of the prize or prizes offered for a raffle event is not more than nine hundred fifty dollars and for fifty‑fifty raffles where the tickets are sold to members or guests of a charitable organization and the total value of proceeds collected is not more than nine hundred fifty dollars.

(C) Charitable organizations that comply with the requirements of Section 33‑57‑120(A) and intend to operate a raffle must submit an annual raffle form to the secretary. This registration form shall cover all authorized raffles for a year. Registrations for raffles shall expire by December thirty‑first each year.

(D) The secretary may revoke a registration issued pursuant to this chapter if it finds that an organization is not in compliance with the exemption requirements of the Internal Revenue Code. A registration revoked under this chapter must not be reissued until a new application for registration has been made and the secretary determines that the organization is complying with the applicable provisions of the Internal Revenue Code.

(E) Charitable organizations registering with the secretary pursuant to the provisions of this chapter shall be subject to investigation and other actions by the secretary and subject to all penalties contained in Chapters 56 and 57, Title 33.

Section 33‑57‑130. (A) A charitable organization is allowed to operate up to four raffles per year. If a charitable organization has affiliates or subsidiaries that share a Federal Employer’s Identification Number (EIN) with a parent charitable organization, meet the requirements of this chapter, and are registered pursuant to Section 33‑57‑120(C), then each qualified affiliate or subsidiary, in addition to the raffles conducted by a parent charitable organization, may operate and conduct up to four raffles per year. Each charitable raffle shall continue for not more than nine months from the date the first raffle ticket is sold. No raffle drawing shall be conducted between the hours of midnight and ten a.m. Local law enforcement officials are authorized to enforce the hours of operation.

(B) The restriction on numbers of raffles shall not apply to raffles held by charitable organizations that are exempt pursuant to Section 33‑57‑120(B)(2).

Section 33‑57‑140. (A) Except for fifty‑fifty raffles, no less than ninety percent of the net receipts of a raffle authorized pursuant to this chapter must be used for the charitable, religious, educational, philanthropic, or eleemosynary purposes of the charitable organization.

(B) No gross receipts, expenses, or net receipts of a raffle shall be used to influence the outcome of a political office, to influence the outcome of an issue pending before a political body or a political party.

(C) A charitable organization shall not enter into a contract with any person to have that person operate raffles on behalf of the charitable organization.

(D)(1) 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 raffle in which the charitable organization is not directly and solely operating the raffle.

(2) No person shall purchase or lease the name of a charitable organization for the purpose of conducting a raffle.

(3) Nothing in this section, however, shall prohibit two or more charitable organizations from participating together to conduct a raffle.

(E) A charitable organization conducting a raffle may advertise the events. Any advertisement for a raffle must name, within the advertisement, the charitable organization sponsoring the event.

(F) A raffle shall be conducted only by a qualified and 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 or staff of the sponsoring organization during a raffle are not compensation. No member, director, officer, employee, or agent of the charitable organization may receive any direct or indirect pecuniary benefit other than being able to participate in the raffle on a basis equal to all other participants. Full time staff of a charitable organization may receive their regular and ordinary compensation, but that compensation shall not be paid from the gross or net receipts of a raffle.

(G) A charitable organization shall not conduct raffles through any agent or third party, and shall not pay consulting fees or something of value to any person for any services performed in relation to the operating or conducting of a raffle. Rental of raffle equipment from a third party and the hiring of a person to operate equipment, so long as the expense is reasonable, are not considered conducting a raffle by a third party.

(H) Non-cash prizes shall not be redeemed for money from the charitable organization or from any other entity that redeems non-cash prizes awarded by raffles for money in the ordinary course of business.

(I) No raffle drawing event shall be held on Christmas Day.

(J) Raffle drawings must be conducted in accordance with local building and fire code regulations.

(K) The provisions of this chapter are not intended and shall not be construed to allow the play of raffles through any electronic device or machine. The operation of raffles excludes electronic gambling machines or devices, slot machines, or video poker games.

(L) An individual prize awarded to each winner in a raffle shall not exceed a maximum fair market value of forty thousand dollars. No real property may be offered as a prize in a raffle. For each raffle event, the total fair market value of all prizes offered by any charitable organization shall not exceed two hundred fifty thousand dollars.

(M) The purchase price for a raffle ticket may not exceed one hundred dollars.

Section 33‑57‑150. Expenses that are reasonable and necessary to operate and conduct raffles, as authorized by this chapter, are allowable, but no member, director, officer, employee, or agent of a charitable organization may receive any direct or indirect pecuniary benefit from payment of expenses related to the operation or conduct of a raffle. Allowable expenses include only expenses incurred for:

(1) advertising, including the cost of printing raffle tickets and gift certificates;

(2) office supplies, copying, and minor office equipment costs incurred in conducting or operating a charitable raffle;

(3) reasonable postage, parking, and shipping costs;

(4) costs of food and beverages, including corkage and gratuity fees, provided to the attendees and volunteers of the event;

(5) costs of materials and supplies for decorating a facility used for a charitable raffle drawing;

(6) entertainment related costs, such as disc jockeys, music bands, auctioneers, waiters, bartenders, and wait staff, incurred during the conducting or operating of a charitable raffle drawing;

(7) repairs to premises and equipment related to conducting or operating a charitable raffle;

(8) door prizes or prizes;

(9) stated premises’ rental or insurance expenses;

(10) security expenses incurred in conducting or operating charitable raffles;

(11) bookkeeping, accounting, or legal services utilized in connection with a charitable raffle including, but not limited to, the registration fees and the required financial reports;

(12) permit costs, fees, or taxes required by local or state government to conduct and operate a charitable raffle; and

(13) janitorial services and supplies incurred in conducting or operating a charitable raffle.

Section 33‑57‑160. (A) Each charitable organization conducting a registered raffle shall keep records of its gross receipts, expenses, adjusted gross receipts, and net receipts for each separate raffle at which winning chances are determined. All deductions from gross receipts for each separate raffle shall be documented with receipts or other records indicating the amount, a description of the purchased item or service or other reason for the expense deduction, and the recipient. The distribution of net receipts shall be itemized as to payee, purpose, amount, and date of payment.

(B) At the conclusion of each raffle, each charitable organization conducting a raffle shall report within forty‑five days from the conclusion of the event to its membership the gross receipts, expenses, and net receipts from each separate raffle, and the distribution of net receipts itemized as required by this chapter.

(C) Each registered charitable organization conducting charitable raffles shall submit annually by March fifteenth to the secretary a report under oath containing the following information for each raffle conducted within the preceding year:

(1) the amount of the gross proceeds;

(2) an itemized list of expenses incurred or paid, including the name of each person, company, or governmental entity to whom an expense was paid;

(3) each item of an expenditure made or to be made, with a detailed description of the merchandise purchased or the services rendered, and the name of each person, company, or governmental entity to whom the expenditure is to be made;

(4) the amount of the net proceeds;

(5) the use to which the proceeds have been or are to be applied;

(6) a list of prizes offered and given, with an estimate of their respective values; and

(7) the number of tickets sold.

(D) Records required by this chapter shall be preserved for three years, and organizations shall make available their records relating to operations of raffles at any time at the request of a member of the organization, or investigators from the secretary or law enforcement.

(E) No new registration shall be issued to an organization that fails to file its report as required by this section until all reports are filed, and the secretary has confirmed that the information in the reports is in compliance with the provisions of this chapter. An organization that fails to file a timely annual report required by this section may be assessed by the secretary administrative fines of ten dollars for each day of noncompliance for each delinquent report not to exceed two thousand dollars for each separate violation. In addition to the assessed fines, the secretary may revoke an organization’s registration for failure to file an annual report and bring an action before an administrative law judge to enjoin the organization from conducting raffles until the required reports are filed with the secretary.

Section 33‑57‑170. (A) The secretary shall perform all functions incident to the administration, collection, enforcement, and operation of the provisions imposed pursuant to this chapter. Upon his own motion or upon complaint of any person, the secretary may investigate an organization to determine if it has violated the provisions of this chapter or has filed an application, or other information required by this chapter, which contains false or misleading statements. The secretary may subpoena or audit persons and organizations and require production of books, papers, and other documents to aid in the investigation of alleged violations of this chapter. By registering with the secretary pursuant to this chapter, each charitable organization consents to the secretary, as well as his agents, including local law enforcement or a circuit solicitor or his agents, entering onto the premises where a charitable raffle drawing is being held, for the purpose of enforcing the provisions of this chapter.

(B)(1) In addition to other actions authorized by this chapter and by law, the secretary, if he has reason to believe that one or more of the following acts or violations listed below has occurred or may occur, may assess a fine of not more than five hundred dollars for each violation and bring an action before an administrative law judge to enjoin a person or an organization from continuing the act or violation, or committing other acts in furtherance of it, and for other relief as the court considers appropriate:

(a) a person or organization operates in violation of the provisions of this chapter;

(b) a person or organization makes a false statement in any information required to be filed by this chapter;

(c) a person or organization uses a device, scheme, or artifice to defraud or to obtain money or property by means of false pretences, representation, or promise during the charitable raffles;

(d) the officers, directors, representatives, or agents of a charitable organization refuse or fail, after notice, to produce records of the organization; or

(e) the funds raised by the charitable raffles are not devoted to or distributed to the charitable purposes of the raffle.

(2) Each violation and each day in violation of a provision of this chapter constitutes a separate offense for which an administrative fine may be assessed.

(C) A person or organization that is assessed an administrative fine, has its registration suspended or revoked, or that has its registration denied, has thirty days from receipt of certified notice from the secretary to pay the fine or request an evidentiary hearing before an administrative law judge. If a person or organization fails to remit fines or request a hearing after the required notice is given and after thirty days from the date of receipt of certified notice has elapsed, the secretary may suspend its registration pending final resolution and may bring an action before the administrative law judge to enjoin the person or organization from engaging in further charitable raffles. The decision of the administrative law judge may be appealed according to the procedures in the Administrative Procedures Act.

Section 33‑57‑180. (A) A person or organization that knowingly and willfully conducts a charitable raffle without obtaining the necessary registration or qualifying for an exemption is guilty of conducting an illegal lottery and, upon conviction of a first offense, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

(B) A person or organization that knowingly and willfully violates a provision of this chapter with the intent to deceive or defraud an individual or charitable organization is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not more than five thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

(C) A person or organization that knowingly and willfully gives false or misleading information to the secretary in a registration or report required by this chapter is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not more than two thousand dollars or imprisoned not more than one year, or both. For a second or subsequent offense, a person or organization is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) Upon the conviction of a member of a charitable organization or the conviction of a charitable organization for a violation pursuant to this section, all proceeds of the raffle from which the offense arose shall be disgorged to the secretary. Proceeds disgorged pursuant to this chapter shall be retained by the secretary for purposes of enforcement of this chapter.

(E) An organization whose officer or director is convicted of a violation pursuant to this section shall be prohibited from applying for a raffle permit for a period of no less than five years after the date of the conviction.

Section 33‑57‑190. The first two hundred thousand dollars in administrative fine revenue received pursuant to this chapter in a fiscal year may be retained by the secretary to offset the expenses of enforcing this chapter. All administrative fines collected pursuant to this chapter in excess of two hundred thousand dollars in a fiscal year must be transmitted to the State Treasurer and deposited in the state general fund. All fees collected pursuant to this chapter must be transmitted to the State Treasurer and deposited in a fund separate and distinct from the general fund and used by the secretary for the purpose of administering the provisions of this chapter. All criminal fines collected pursuant to this chapter may be retained by the law enforcement agency assisting the secretary in its prosecution.

Section 33‑57‑200. The Secretary of State may promulgate regulations to administer and enforce the provisions of this chapter.”

SECTION 2. Nothing in the provisions of this act, including the allowance of qualified charitable organizations to conduct some raffles by the use of limited types of non‑electronic casino games, shall alter or amend the terms of “The Catawba Indian Claims Settlement Agreement” or “The Catawba Indian Claims Settlement Act”, as referenced in S.C. Code Ann. Sections 27‑16‑10 through 27‑16‑140 (2010) and in 25 U.S.C. Sections 941 through 941*n* (2010), or the holding of the South Carolina Supreme Court in Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 642 S.E.2d 751 (2007), so as to allow an Indian Tribe or any other group of individuals to operate or conduct casino games unless conducted or operated only by a qualified charitable organization solely pursuant to the terms of Chapter 57, Title 33.

SECTION 3. This act shall apply prospectively. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective, unless the provision prohibiting the altering or amending of the terms of “The Catawba Indian Claims Settlement Act” is held invalid or unconstitutional, so as to allow casino games in South Carolina by an Indian Tribe or any other group of individuals. The invalidity of that provision shall affect all other provisions or applications of this act, and to that end, the provisions of this act are non‑severable from that provision.

SECTION 5. The provisions of this act become effective thirty days after ratification of an amendment to Section 7, Article XVII of the Constitution of this State allowing its terms as proposed to the qualified electors of this State at the 2012 General Election, and the provisions of this act are repealed five years from the effective date unless further authorized by the General Assembly.

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