~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 19, 2012

**H. 3079**

Introduced by Rep. Herbkersman

S. Printed 4/19/12--H. [SEC 4/24/12 3:00 PM]

Read the first time January 11, 2011.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3079) to amend the Code of Laws of South Carolina, 1976, by adding Section 12‑21‑4310 so as to create the Charitable Bingo Advisory Committee, provide for its, 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 10, by striking SECTION 10 and inserting:

/ SECTION 10. Section 12‑21‑4007(A)(h) of the 1976 Code, as added by Act 172 of 2004, is amended to read:

“(h) must be used only for ~~one unit~~ two units for each player, at any time during the bingo session. A player may purchase additional cards to be marked manually, but not for use with ~~an~~ electronic ~~dabber~~ dabbers;”

SECTION 11. Section 12‑21‑4190(A) of the 1976 Code, as last amended by Act 359 of 2006, is further amended to read:

“(A)(1) The department shall charge and retain ten cents for each dollar of face value for each bingo card sold for AA, B, D, and E licenses. The department shall charge and retain five cents for each dollar of face value for each bingo card sold for an F license. The department shall charge and retain four cents for each dollar of face value for each bingo card sold for a C license. The promoter shall collect a five percent prize fee for each dollar of prizes paid to each winner for instant bingo tickets, 24‑number bingo, and lightning bingo. Prize fees must be remitted to the department monthly no later than the tenth day of the following month.

(2) The prizes awarded and fees imposed on instant bingo pursuant to item (1) of this subsection are not required to be remitted as taxes and are not included in gross proceeds for purposes of the prize limitations provided in Section 12‑21‑4000(12).”

SECTION 12. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

This bill, as amended, is expected to raise departmental revenue within the state’s general fund by a total of $443,216 in FY 2012-13. Additionally, it would raise funds earmarked to the Division on Aging (DOA) within the Office of the Lieutenant Governor by $40,823; the Department of Parks, Recreation and Tourism (PRT) by $120,442; and local charities by a total of $203,450 in FY 2012-13.

**Explanation:** This bill, as amended in subcommittee, broadens provisions for a bingo gaming session to include a deal of instant bingo tickets, face value not to exceed $1 each, and authorizes several types of instant bingo games. In addition to existing charges by class of bingo license that range from a rate of 4 cents to 10 cents per dollar of bingo card/instant bingo ticket sales, promoters must return a fee to the Department of Revenue (DOR) equivalent to 5% of prize winnings from games played with instant bingo tickets, for 24-number bingo and lightning bingo. As not otherwise allocated in permanent law, such prize fees must be directed to the state’s general fund under temporary law (Proviso 89.1 in current State Budget).

We expect gross receipts from bingo card sales of approximately $7,825,000 in FY 2012-13, of which $782,500, or 10%, would stem from sale of instant bingo tickets. Of this increase, local charities would receive $203,450 (26%), and balance of $579,050 (74%) would be allotted to state programs/funds as follows: general fund, $417,785; PRT, $120,442; and DOA, $40,823. As an incentive to promote instant bingo games, we expect promoters to return a minimum payout of 65% of card sales in winnings. Multiplying $782,500 times .65 factor yields $508,625 in winnings; then multiplying $508,625 times .05 factor yields $25,431, as that amount directed to the state’s general fund in FY 2012-13 from the additional 5% prize fee. The amended bill is therefore expected to raise state and local revenues by a combined total of $807,931 in FY 2012-13, prorated at a total of $604,481 to state sources and $203,450 to local charities.

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑21‑4310 SO AS TO CREATE THE CHARITABLE BINGO ADVISORY COMMITTEE, PROVIDE FOR ITS MEMBERSHIP AND PURPOSES, AND REQUIRE A DEPARTMENT OF REVENUE DESIGNEE AS LIAISON; BY ADDING SECTION 12‑21‑4320 SO AS TO PROVIDE FOR ESTABLISHMENT OF AN INFORMATIONAL CHARITABLE BINGO WEBSITE BY THE DEPARTMENT AND REQUIRING THE DEPARTMENT’S RESPONSE TO INQUIRIES AS PERMANENTLY ACCESSIBLE ADVISORY OPINIONS; BY ADDING SECTION 12‑21‑4330 SO AS TO PROVIDE FOR ALLOWABLE PROMOTIONAL EXPENSES; TO AMEND SECTION 12‑21‑3920, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE BINGO TAX ACT, SO AS TO INCLUDE SPECIFIC NAMED GAMES IN THE DEFINITION “BINGO”, AND TO PROVIDE THAT THE DEFINITION OF A “CARD” INCLUDES AN INSTANT BINGO TICKET; TO AMEND SECTIONS 12‑21‑3940 AND 12‑21‑3950, BOTH AS AMENDED, RELATING TO APPLICATIONS FOR LICENSING BY NONPROFIT ORGANIZATIONS AND PROMOTERS, RESPECTIVELY, SO AS TO PROVIDE FOR AN INFORMAL APPEAL OF A REJECTION AS A FIRST STEP IN AN APPEAL; TO AMEND SECTION 12‑21‑3990, AS AMENDED, RELATING TO THE MANNER OF PLAYING BINGO, SO AS TO SPECIFY THE MANNER OF PLAYING BINGO WITH INSTANT BINGO TICKETS; TO AMEND SECTION 12‑21‑4000, AS AMENDED, RELATING TO PROCEDURES FOR OPERATING A BINGO GAME, SO AS TO FURTHER PROVIDE FOR THE APPLICABILITY OF BINGO PROCEDURES FOR BINGO PLAYED WITH INSTANT BINGO TICKETS, TO INCREASE THE ALLOWABLE EXPENSE FOR PROMOTIONS FROM ONE HUNDRED DOLLARS TO TWO HUNDRED FIFTY DOLLARS FOR EACH SESSION, AND TO SPECIFY THE INTENT OF THIS SECTION; TO AMEND SECTION 12‑21‑4020, AS AMENDED, RELATING TO CLASSES OF BINGO LICENSEES, SO AS TO PROVIDE FOR OPERATIONAL HOURS; TO AMEND SECTION 12‑21‑4120, AS AMENDED, RELATING TO A CLARIFICATION FROM THE DEPARTMENT AS TO PLAY OR OPERATION OF A GAME, SO AS TO FURTHER PROVIDE FOR A BINGO ADVISORY OPINION; AND TO AMEND SECTION 12‑21‑4240, RELATING TO LICENSES TO MANUFACTURE, DISTRIBUTE, OR USE BINGO CARDS, SO AS TO INCLUDE ITEMS OTHER THAN BINGO CARDS TO WHICH THIS SECTION APPLIES.

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

SECTION 1. Article 24, Chapter 21, Title 12 of the 1976 Code is amended by adding:

“Section 12‑21‑4310. (A) There is created the Charitable Bingo Advisory Committee with advisory power only, but with the purpose of addressing issues arising in the charitable bingo industry including, but not limited to, modernization of the industry, expansion of products, streamlining the regulatory process, and improvement of communication toward the ends of conformance and compliance with the Bingo Tax Act.

(B) The committee must be made up of three representatives from nonprofit organizations licensed pursuant to this article, three representatives of promoters licensed pursuant to this article, one distributer licensed pursuant to this article, one manufacturer licensed pursuant to this article, and two retail consumers of charitable bingo (players).

(C) The committee shall designate a single department employee, who is knowledgeable about the provisions of the Bingo Tax Act, to serve as liaison with the committee.

Section 12‑21‑4320. (A) The department shall cause the establishment of a charitable bingo website, with a link from its own website, for the purpose of serving as a clearinghouse for information and access to the Bingo Tax Act and its implementation and regulation, and the Charitable Bingo Advisory Committee. The website also must contain access to information pertaining to licenses, complaints, and violations in connection with the Bingo Tax Act, and other routine notices and information in that connection.

(B) In addition to the purposes set forth in subsection (A) the website also must include a process for the formal query of the department by any charitable bingo industry stakeholder concerning the implementation or enforcement of the Bingo Tax Act. The department shall issue, within thirty days of receiving the query, a bingo advisory opinion in response to each inquiry, publish the opinion on the website, and make each opinion easily and permanently accessible.

Section 12‑21‑4330. (A) A nonprofit organization or promoter licensed pursuant to this article may expend its promotional expenses allowance provided in this article, for the following activities:

(1) develop customer data bases;

(2) conduct of focus groups;

(3) promulgate customer satisfaction surveys, customer comment cards, and suggestion programs;

(4) engage in direct mail marketing;

(5) provide promotional pricing through the mail and by individual website;

(6) issue promotional Bingo Bucks for use to purchase bingo paper and electronic bingo card numbering equipment or electronic dabbers; and

(7) use other reasonable efforts customary in the course of ordinary business in the charitable marketing industry to attract participation.

(B) Bingo Bucks, as provided in subsection (A)(6) must be accounted for in the same manner as cash, except that they are excluded from total revenue and from taxation as gross receipts.”

SECTION 2. Section 12‑21‑3920(1) and (3) of the 1976 Code, as last amended by Act 172 of 2004, is further amended to read:

(1) ‘Bingo’ or ‘game’ means a specific game of chance, commonly known as bingo, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers and symbols selected at random. The term also includes, but is not limited to, ‘buddy bingo’, ‘table winners’, ‘mirror image’, ‘clothesline’, ‘u pic em’, ‘double action’, ‘instant bingo’, ‘24‑numbering’, and ‘lightning bingo’ games, as well as ‘event’ and ‘instant event’ games.

(3) ‘Card’ means a printed or nonprinted design or instant bingo ticket on which there are arranged five horizontal rows and five vertical columns forming twenty‑five squares. Numbers are printed in twenty‑four of the squares, and the term ‘free’, ‘free square’, or ‘free space’ is printed in the square or space located in the center of the card. The five columns are denominated from left to right by the respective letters of the word ‘B‑I‑N‑G‑O’. Each square in the ‘B’ column contains a number from one through fifteen inclusive; each square in the ‘I’ column contains a number from sixteen through thirty inclusive; except for the center space which is marked as free, each square in the ‘N’ column contains a number from thirty‑one through forty‑five inclusive; each square in the ‘G’ column contains a number from forty‑six through sixty inclusive; and each square in the ‘O’ column contains a number from sixty‑one through seventy‑five inclusive. A number may not appear twice on the same card. A nonprinted design is a bingo ticket for use only with an electronic dabber. The bingo ticket is a perforated two‑part ticket and must bear a sequential serial ticket number, the South Carolina state seal, denomination, number of faces authorized for download or activation, the Department of Revenue issued organization license number, and other information that may be required by the department. The ticket must have designated blanks for entry of the date sold and electronic dabber unit number supplied. Bingo tickets must be printed by a bingo ticket manufacturer licensed by the department and must be sold only by a distributor licensed by the department. Bingo tickets must meet the design and requirements of the department. Bingo tickets may be used only by a promoter or nonprofit organization if the ticket has been approved by the department. A license for a bingo ticket manufacturer costs one thousand dollars. A manufacturer of bingo cards or electronic dabbers or site systems, a distributor, a promoter, or a nonprofit organization may not have an interest, direct or indirect, in a bingo ticket manufacturer. The bingo ticket manufacturer must maintain records as required by the department.

An instant bingo ticket, for purposes of this definition, is a ticket by which a player may win a prize by opening a cover from the ticket to reveal a set of numbers, letters, symbols, or patterns, some of which have been designated in advance as prize winners. Instant bingo tickets must be printed by a bingo ticket manufacturer licensed by the department and must be sold only by a distributor licensed by the department.”

SECTION 3. Section 12‑21‑3940(B) of the 1976 Code is amended to read:

“(B) Upon application for a license, the department has thirty days to approve or reject the application based on the requirements of this article. A rejected applicant may meet with the department’s designee within ten days of his rejection for an informal appeal before the formal appeals process begins.”

SECTION 4. Section 12‑21‑3950(B) of the 1976 Code, as last amended by Act 334 of 2002, is further amended to read:

“(B) Upon application for a license, the department has forty‑five days to approve or reject the application based on the requirements of this article. A rejected applicant may meet with the department’s designee within ten days of his rejection for an informal appeal before the formal appeals process begins.”

SECTION 5. Section 12‑21‑3990 of the 1976 Code, as last amended by Act 172 of 2004, is further amended to read:

“Section 12‑21‑3990. (A) ~~The~~ Except for games involving the use of instant bingo tickets, the game of bingo must be played in the following manner:

(1) Bingo is played by more than one player and a caller who is associated with the house. Each player must pay face value for each card to be played during the course of a game and may purchase the card for a specified number of games. All cards sold for a game must sell for face value and cards may not be given to players as prizes or for free. After the player has purchased a card or cards for a specified number of games, the house cannot require or accept an additional payment or consideration by the player in order to complete the specified number of games.

(2) Before each game begins, the caller shall announce to the players the configuration or configurations that will win the game. A configuration consists of a number of grids covered in the manner announced by the caller. Any method of playing the games is allowed if the method is announced before each game’s beginning including, but not limited to, wild card games. In addition, anytime before the conclusion of the game, the prize, specifically stating the dollar amount or value of merchandise awarded to the winner or winners for the game, must be announced.

(3) The prize must be awarded to the winner of that game without delay. For multiple winners, the prize must be divided equally among the winners. In the case of a merchandise prize, the cash value of the merchandise may be divided among the winners. Purchase receipts of merchandise awarded as prizes must be made available to players and the department for confirmation of value.

(4) The caller shall draw and announce numbers from the cage one at a time. If a player has a card with the called number on it, he may use a marker to cover the square which contains the number. After the number is announced, it must be indicated on the master‑board by the caller.

(5) When a player covers sufficient squares on a card to achieve the winning configuration, he may indicate to the caller. The caller shall require that the player’s card be checked against the master‑board in the presence of the other players to determine if the squares were covered accurately. If it is determined by the caller that the player accurately has covered the squares and achieved the preannounced configuration, the player is declared the winner. If it is determined that the player has not covered the squares accurately and achieved the preannounced configuration, play continues in that game.

(6) All devices, including the master‑board, used to show what numbers have been called during a game must not be changed or turned off until the winners are verified.

(B) For a bingo game played with instant bingo tickets, the game begins when the promoter or nonprofit organization makes the tickets available to participants for purchase for the face value printed on the ticket, not to exceed one dollar. Tickets may not be used as prizes or given away free of charge. Instant bingo tickets may be sold only during a bingo session.

(1) An instant bingo ticket game consists of one deal of instant bingo tickets. A deal of instant bingo tickets is a separate set or package of not more than four thousand tickets where each ticket in the deal bears the same serial number.

(2) Prizes in bingo games played with instant bingo tickets may be awarded to a player who opens a ticket to reveal a predesignated winning letter, number, symbol or pattern, or to a player who opens a ticket to reveal a letter or number that matches the letter or number selected by the caller from a set of bingo balls. Prizes must be awarded to the winner without delay.”

SECTION 6. Section 12‑21‑4000 of the 1976 Code, as last amended by Act 172 of 2004, is further amended to read:

“Section 12‑21‑4000. In addition to the manner of play prescribed in Section 12‑21‑3990, and except for bingo played with instant bingo tickets, except as otherwise specified herein, the following procedures apply to the conduct of the game:

(1) Before the beginning of the first game, all seventy‑five balls must be displayed openly on the master‑board for the inspection of the players.

(2) Only one set of seventy‑five balls and only one master‑board is allowed in the room or area during the play of the game.

(3) Only one bet or payment is to be paid for each card.

(4) No bets or payments may be made while a game is in progress, except the sale of cards for subsequent games.

(5) Reserved.

(6) The house is required to identify the games for which a card may be used before the card is purchased.

(7) Before the start of play, the caller shall announce to all players the winning configuration of covered squares for that particular game.

(8) The prize must be awarded to the first person who successfully achieves the winning configuration of covered squares. All winning configurations must be verified using an electronic verifying system and must be displayed on the monitor for all players to see.

(9) Balls must be selected randomly by an indiscriminate process.

(10) Only one number may be called at a time.

(11) All balls drawn remain on the master‑board until the conclusion of the game.

(12)(a) At least fifty percent of the gross proceeds of the sale of bingo cards taken in by the house during a single session must be returned to the players in the form of prizes. However, with respect to fair licenses, this requirement must be met during the course of the fair.

(b) A bingo operation may take in only two times more in gross proceeds than the prize for that session averaged on a quarterly basis. Amounts in excess of this limit are subject to a tax, in addition to any other bingo license taxes and fees equal to the amount of the excess. Each session that the gross proceeds are greater than twice the prize amounts paid constitutes a separate offense if the tax is unpaid. This excess proceeds tax must be remitted to the department on the organization’s quarterly bingo report and distributed as provided in Section 12‑21‑4190. Failure to remit this excess proceeds tax to the department shall result in immediate suspension of both the promoter’s license and the organization’s license. The department, after a conference with the promoter and organization, may permanently revoke the license of the promoter or the nonprofit organization, or both. If permanently revoked, the promoter, nonprofit organization, or any partner or member of the organization may no longer manage, conduct, or assist in any manner with a bingo operation in this State.

(13) The playing of bingo, including bingo played with instant bingo tickets, is restricted to the premises designated with the department by the sponsor organization.

(14) Bingo, including bingo played with instant bingo tickets, only may be played at the place designated by the bingo licensee on its original or amended application.

(15) The house may hold promotions of special events during a session offering players prizes other than from the play of bingo not to exceed ~~one~~ two hundred fifty dollars in cash or merchandise for each session. This amount is not to be paid out of the bingo account and is not included in total payouts for a session. There is no additional charge to players to participate in a special promotion. The promotion must not be a form of gambling or a game of chance.

(16) Nothing in this section or in Section 12‑21‑3990 prohibits or limits, or is intended to prohibit or limit, the play of any bingo game as defined in Section 12‑21‑3920(1).”

SECTION 7. Section 12‑21‑4020(2) and (3) of the 1976 Code, as last amended by Act 334 of 2002, is further amended to read:

“(2) CLASS B: An organization operating a bingo game offering prizes, which do not exceed eight thousand dollars a session, shall obtain a Class B bingo license at a cost of one thousand dollars. The holder of a Class B license may not conduct more than five bingo sessions a week. These sessions may be packaged in connection with, or scheduled at the same time as, a session held by a Class C licensee. One of the five sessions may be a session scheduled from after midnight until 2:00 a.m.

(3) CLASS C: An organization operating a bingo game and offering prizes of twenty dollars or less a game during a single session shall obtain a Class C bingo license at no cost. However, the organization may offer a prize in cash or merchandise of no more than one hundred fifty dollars for six jackpot games a session. The department, in its discretion, may allow certain Class C licenses to use hard bingo cards instead of the paper cards required by this article.

To qualify to play on hard cards, a bingo game conducted by a Class C license must meet the following criteria:

(a) be operated solely by volunteers and during the hours of 9:00 a.m. to 2:00 a.m.;

(b) the person managing, conducting, or operating the bingo game must not be paid or otherwise be compensated and must be a designated member of the organization;

(c) remuneration, including wages or other compensation, must not be made to any individual or corporation;

(d) all equipment used to operate a game of bingo, including chairs, tables, and other equipment, must be owned by the charity;

(e) the organization may lease the building directly from the owner of the building or own the building in which the game of bingo is played. The organization may not lease or sublease the building from a person who is not the owner;

(f) the only expenses allowed to be paid from the proceeds of the game are utility bills, prizes, purchases of cards, payments for the lease of a building, purchases of equipment required to operate a game of bingo, allowable promotion expenses, and the charitable purposes of the organization;

(g) one hundred percent of the net proceeds from the operation of the game must be used for charitable purposes.”

SECTION 8. Section 12‑21‑4120 of the 1976 Code, as last amended by Act 172 of 2004, is further amended to read:

“Section 12‑21‑4120. (A) An organization or a promoter seeking clarification on the play of or operation of a bingo game shall submit to the department’s bingo regulatory section a written request or an inquiry pursuant to Section 12‑21‑4320 seeking a determination as to whether or not a certain or specific action constitutes a violation. A conference may be requested upon the receipt of the clarification request. The department shall respond, in writing, to the party requesting the clarification, or advisory opinion pursuant to Section 12‑21‑4320, citing specific statutes which disqualify an action and, when applicable, citing actions that are authorized pursuant to the laws of this State. A response or any failure to respond is not grounds for estoppel nor does it grant any rights to the organization or promoter seeking a clarification. An organization or a promoter found in violation of the provisions of this article and assessed additional taxes, penalties, fines, or interest is entitled to a conference upon request.

(B) Responses issued to inquiries submitted pursuant to this section must be permanently accessible in the same manner as advisory opinions pursuant to Section 12‑21‑4320.”

SECTION 9. Section 12‑21‑4240 of the 1976 Code is amended to read:

“Section 12‑21‑4240. Each manufacturer, distributor, organization, or promoter must be licensed to manufacture or distribute, or use bingo cards, bingo tickets, electronic dabbers, or charity game tickets. The department shall charge an annual license fee of five thousand dollars for each manufacturer and two thousand dollars for each distributor. A license issued by the department under this section is renewable annually unless canceled or terminated. No license issued under this section is transferable or assignable.”

SECTION 10. This act takes effect upon approval by the Governor.

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