

CHARITABLE GAMING

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House Bill 4173 (H-2) as referred to second committee

Sponsor: Rep. John Chirkun

1st Committee: Regulatory Reform

2nd Committee: Ways and Means

Complete to 5-1-19

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4173 would amend the Traxler-McCauley-Law-Bowman Bingo Act to group provisions pertaining to charitable gaming other than millionaire parties, such as bingo and raffles, into a newly designated Article 1, make numerous technical revisions, and repeal several obsolete provisions of the act.

The bill would also create a new Article 2 that would, among other things, contain provisions relating to *millionaire parties*, add definitions, rescind all current rules pertaining to millionaire parties and require new rules implementing Article 2 to be promulgated, place regulation of millionaire parties with the Michigan Gaming Control Board (MGCB), require fees and revenues collected by the MGCB pertaining to millionaire parties to be paid into the State Lottery Fund, and require annual reports to the governor and legislature about the operation of licensed millionaire parties. Many of the provisions of the bill are similar or identical to those contained in the emergency rules promulgated by the executive director of the MGCB in 2014.

FISCAL IMPACT: The bill would increase administrative, regulatory, and audit costs for MGCB as the entity charged with oversight of the millionaire parties. The magnitude of the increased costs is unknown, but likely minimal compared to current costs. (See *Fiscal Information*, below, for a detailed analysis.)

THE CONTENT OF THE BILL:

Definitions

As used in the act both currently and under the bill, *millionaire party* means an event at which wagers are placed on games of chance customarily associated with a gambling casino through the use of imitation money or chips that have a nominal value equal to or greater than the value of the currency for which they can be exchanged.

Qualified organization means either of the following:

- A bona fide religious, educational, service, senior citizens, fraternal, or veterans' organization that operates without profit to its members and that either has been in existence continuously as an organization for a period of five years or is exempt from taxation under section 501(c) of the Internal Revenue Code.
- For the purposes of conducting a small or large raffle under the act, a component of the military or Michigan National Guard whose members are in active service or active state service.

However, qualified organization does not include a candidate committee, political committee, political party committee, ballot question committee, independent committee, or any other committee as defined by, and organized under, the Michigan Campaign Finance Act.

Article 1: Other than millionaire parties

Generally speaking, the changes to the existing provisions of the Bingo Act—newly designated as Article 1—would be technical changes relating to the hosting of a bingo, raffle, charity game, or numeral game. The bill would remove references to millionaire parties in these provisions, as that form of charitable gaming would be governed by the proposed Article 2.

The bill would group several existing sections into the new Article 1. This article would apply to such events as bingo games, raffles, charity games, or numeral games conducted under a license issued under Article 1. Where current law states that the Bureau of State Lottery is responsible for the enforcement and supervision of the administration of the Act, the bill would instead specify that the Bureau is responsible for the enforcement and supervision of the administration of Article 1.

Charitable gaming requirements

The bill would add a new provision stating that all fees and revenue collected by the executive director or board would have to be paid into the State Lottery Fund, out of which all necessary expenses incurred by either the executive director or the board in the administration and enforcement of any activity authorized by the act would be paid. All fees and revenue collected by the lottery commissioner or Bureau of State Lottery are already paid into this fund and pay for all necessary expenses incurred by the commissioner or Bureau in the administration and enforcement of the act.

The expenses incurred could not exceed the amount of revenues received from the sale of charity game tickets and all fees collected under the act. At the end of each fiscal year, all money attributable to fees and revenue collected under the act that remain in the fund would be deposited into the General Fund.

A raffle conducted under the act would be added to an existing list of other forms of gaming exempt from other laws that provide a penalty for a person who conducts or participates in those activities.

Article 2: Millionaire parties

Millionaire party license

Under HB 4173, a *qualified organization* could be issued up to four millionaire party licenses in a calendar year (but no more than one license per day), with each of those licenses issued for up to four consecutive days. A license would be valid for only one location, which would have to be stated on the license. Further, the license would have to state that, for each day on which a millionaire party is to be conducted, gaming may only be conducted by the licensee between the hours of 8 a.m. on that day and 2 a.m. on the following day. A millionaire party license would not be assignable or transferable.

Application for a license

Under the bill, a written application would have to be submitted to the executive director on a prescribed form and would have to include all of the following:

- The applicant's name and address, as well as the name and address of each officer.

- The name of each individual who will serve as a dealer at the millionaire party event and whether the individual has been convicted of, forfeited bond on a charge of, or pled guilty to any of the following:
 - A felony.
 - A gambling offense.
 - Criminal fraud.
 - Forgery.
 - Larceny.
 - Filing a false report with a governmental agency.
- The location at which the event will be conducted and the dates of the event.
- A description of the demarcated area for the event and an explanation of how the demarcated area will be marked.
- Sufficient facts relating to the applicant's incorporation or organization to enable the executive director to determine whether the applicant is a qualified organization.
- A sworn statement attesting to the nonprofit status of the applicant, signed by the principal officer of the applicant.
- Other information the executive director considers necessary.

Issuance of a millionaire party license

The executive director would have to issue a millionaire party license to an applicant that is determined to be a qualified organization, that is otherwise eligible and suitable, and that has paid a fee to the executive director of \$50 per day that the applicant proposes to conduct the millionaire party.

Operation of an event

A licensee would have to ensure that an event is conducted in compliance with the Bingo Act and rules promulgated under it. The license would have to be posted and conspicuously visible at all times at the event location. A charity game or numeral game (under Article 1) could be conducted at the event, and the executive director would have sole enforcement and supervisory authority.

A licensee could only conduct an event with equipment that it owned, rented from another qualified organization under an approved rental agreement, or purchased or rented from a supplier. No more than \$20,000 could be received in exchange for imitation money or chips on any day under the license. However, if the licensee conducted the millionaire party without using dealers from a supplier and owned the location at which the party was held, and if the license was for fewer than four days of gaming, the daily limit would be determined by dividing \$80,000 by the number of days under the license.

Gaming would have to be restricted to the demarcated area approved by the executive director, and access to the demarcated area would have to be controlled. A licensee could not allow access by an individual under 18 years old to a demarcated area when gaming was being conducted. If alcohol were served at an event, any individual in the demarcation area who is at least 18 years old but younger than 21 would have to wear a mark indicating that a member or agent of the licensee has verified the individual's age and identification.

Bona fide members of a qualified organization

A *bona fide member* of a licensee present at the event would have to wear a vest, button, or other distinctive apparel identifying that individual as a member of the licensee. At least two bona fide members of the millionaire party licensee, not including a member acting as a dealer, would have to be present at all times during an event. If fewer than two bona fide members were present at any time during an event, the licensee would have to immediately report this to the executive director. The executive director could require the licensee to stop conducting the event.

Bona fide member would mean a member who participates in the qualified organization to further its *lawful purposes* or the spouse of such a member.

Lawful purpose would mean one or more of the authorized purposes stated in a qualified organization's written bylaws, constitution, charter, or articles of incorporation on file with the executive director.

Unless permitted by the act, a rule promulgated under the act, or written authorization of the executive director, only a bona fide member of the millionaire party licensee could perform the following duties at an event conducted under the license:

- Monitor a game or verify that the game is conducted in conformance with the rules of the game.
- Verify the age of a player.

A bona fide member of a licensee could not do the following:

- Play a game at an event at which the member is working or assisting.
- Share in a prize awarded at an event at which the member is working or assisting.
- Purchase, play, or accept a charity game ticket or numeral game ticket offered for sale by the licensee at an event at which the member is working or assisting.
- Split a prize with a player or accept a tip of any kind at an event conducted under the license, except for a cash tip given to the member for serving as a dealer at the event.

One of the bona fide members listed on the application for the millionaire party license would have to act as the millionaire party chairperson. An individual could not serve as chairperson of millionaire parties conducted by more than one qualified organization during a calendar year.

Dealers

As defined in the bill, *dealer* means an individual who, in a millionaire party game, performs the act of dealing, assists in supervising the dealers, or provides technical advice to the millionaire party chairperson.

A millionaire party licensee could use only a bona fide member or an employee of a supplier as a dealer at an event. Only an individual listed as a dealer on the license application could act as a dealer at an event conducted under that license. A licensee would also have to ensure that the dealers at an event comply with Article 2, rules promulgated under Article 2, and any directives of the executive director. Further, an individual would be prohibited from acting as

a dealer if he or she has been convicted of, forfeited bond on a charge of, or pled guilty to any of the following offenses:

- A felony.
- A gambling offense.
- Criminal fraud.
- Forgery.
- Larceny.
- Filing a false report with a governmental agency.

Locations and location owners

A millionaire party licensee could not enter into an agreement with a location owner or lessor unless the agreement were expressed in a written rental agreement approved by the executive director.

No more than two licensed millionaire parties could be conducted at a location on the same day, and no more than four could be conducted at a location in a week.

A location owner or lessor, a partner, member, director, officer, agent, or employee of a location owner or lessor, a shareholder of a privately held corporation that is a location owner or lessor, or a person residing in the same household as any of these, could not do any of the following:

- Be an officer of a qualified organization conducting a millionaire party at the location.
- Participate as a player in any event being conducted at the location.
- Participate in any aspect of an event being conducted at the location, including providing dealers, equipment, or workers, unless all of the following conditions exist:
 - The location is owned or rented by a qualified organization and used by the qualified organization on a continual basis for the regular use of its members.
 - The qualified organization is the licensee and is conducting the event.
 - The executive director has granted a waiver for the participation.

A licensee and a location owner or lessee would have to allow an authorized representative of the executive director, the state police, or a peace officer of a political subdivision in which the event is being conducted to inspect the location or an intended location during business hours.

Expenses

A licensee could not expend more than 45% of the gross profit from an event to pay expenses incurred in connection with the event.

A millionaire party licensee would be prohibited from paying an expense related to an event unless all of the following applied:

- The expense was incurred in connection with the conduct of the event.
- The expense was necessary and reasonable and one of the following:
 - The purchase or rental of equipment necessary for conducting the event or payment of services reasonably necessary for the repair of equipment.
 - Cash prizes or the purchase of prizes of merchandise.
 - Rental of the location at which the event is conducted, capped at \$250 for each event day.
 - Janitorial services.

- The fee required for issuance or reissuance of a license to conduct the event.
- Other reasonable expenses incurred by the licensee, as permitted by rule promulgated under the act.
- The expense was itemized.
- The expense was approved by the executive director in writing prior to the event.

Compensation

A millionaire party licensee could not accept any compensation in connection with an event unless the compensation were expressly authorized by Article 2 or a rule promulgated under Article 2. A person could not accept any commission, salary, pay, profit, or wage for participating in the management or operation of a millionaire party, except as allowed by rule.

Financial reporting

A millionaire party licensee would be required to keep a record of each event as required by the executive director, and would have to allow an authorized representative of the executive director to inspect—during reasonable business hours—those records and all financial accounts into which proceeds from the event are deposited or transferred.

A licensee would also have to file with the executive director a financial statement signed by the principal officer of the qualified organization. The statement would have to contain a disclosure of receipts and expenses related to the conduct of each event as required by rule, as well as a list of the qualified members of the millionaire party licensee who were present at each event.

If the revenue from a millionaire party were represented to be used or applied by a licensee for a charitable purpose, the licensee would also have to file a copy of the financial statement with the attorney general under the Supervision of Trustees for Charitable Purposes Act.

Supplier license

An applicant for a license or renewal of a license to operate as a supplier to millionaire party licensees would have to submit a written application, along with the annual license fee of \$300, to the executive director on a form prescribed by the executive director. A supplier's license would expire at midnight on September 30 of each year.

As required by the executive director, a licensed supplier would also have to submit reports regarding the supplier's activities under Article 2.

A person could not obtain a supplier's license on behalf of another person, and a person could not conduct specified financial dealings with a licensed gaming supplier without the executive director's approval.

Advertising

A licensee could advertise an event if the advertising complied with rules promulgated under Article 2 and stated the purposes for which the proceeds from the event will be used.

Promulgation and rescinding of rules

The bill would allow the executive director of the MGCB to promulgate rules under the Administrative Procedures Act. It also states that any rules promulgated by the executive director before the bill's effective date would remain in effect unless inconsistent with the bill.

Enforcement of Article 2

The executive director of the MGCB would be responsible for the enforcement and supervision of the administration of Article 2 and would have to employ personnel as necessary to implement the article.

If a licensee or an officer, director, agent, member, or employee of the licensee violated Article 2 or a rule promulgated under it, the executive director could deny, suspend, summarily suspend, or revoke any license issued under Article 2. The executive director could summarily suspend a license for a period of not more than 60 days pending prosecution, investigation, or public hearing. A proceeding to suspend or revoke a license would be a contested case and would have to be conducted in accordance with the Administrative Procedures Act.

Upon petition of the executive director and after a hearing, the circuit court could issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in a matter over which the executive director has jurisdiction, control, or supervision under Article 2. If a person subpoenaed to attend any such proceeding or hearing failed to obey the command of the subpoena without reasonable cause, or if a person in attendance in any such proceeding or hearing refused, without lawful cause, to be examined or to answer a legal or pertinent question or to exhibit a book, account, record, or other document when ordered to do so by the court, the person could be punished as being in contempt of the court.

The executive director would be required to report annually to the governor and the legislature about the operation of events licensed under Article 2, abuses the executive director may have encountered, and recommendations for changes to the act.

Penalties

Except as otherwise provided, a person who willfully violated the act would be guilty of a misdemeanor punishable by imprisonment for up to six months or a fine of up to \$1,000, or both, for doing any of the following:

- Cheating at an event.
- Using millionaire party proceeds for something other than the lawful purpose of the qualified organization.
- Knowingly making a wager if the person is under 18 years old or permitting such a person to make a wager.
- Using chips not authorized for use at a millionaire party.
- Willfully failing to appear before or provide an item to the executive director at the time and place specified in a subpoena.
- Willfully refusing, without just cause, to testify or provide items in an answer to a subpoena or subpoena duces tecum issued by the executive director.
- For a location owner or lessor and certain other individuals, making or receiving a payment from any person, other than for the preapproved payment of rent, for any aspect of a millionaire party. (This would not apply to the sale of food or drink.)

- Conducting without a license, or permitting a person who is not licensed under the act to conduct, activities requiring a license under the act.

A person who did either of the following would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$2,500, or both:

- Knowingly made a false statement on an application for a license under the act.
- Knowingly made false statements, orally or in writing, to the executive director or his or her authorized representatives.

A person convicted of any of these offenses would be ineligible to receive or maintain a license under the act. The person could be liable for a fine up to the amount of any payments made or received in violation of the act and could be charged with, convicted of, or punished for any other violation of the law.

Finally, the executive director could impose a civil penalty of up to \$2,500 for each violation of the act and could issue a cease and desist order or obtain injunctive relief.

Repealers

Sections 10a, 10b, 17, and 20 of the Bingo Act would be repealed. Section 20 contains an obsolete provision pertaining to the original effective date of the act and stating that bingo could not be lawfully conducted until June 30, 1973. Sections 10a and 10b pertain to millionaire parties. Section 17 makes willful violation of the act a misdemeanor punishable by a fine of up to \$1,000 or six months' imprisonment, or both. Generally speaking, the provisions of these sections have been incorporated into the new Article 2.

MCL 432.102 et seq.

BACKGROUND INFORMATION:

This bill is part of a series of reintroductions of bills passed by the House and Senate in December of 2018 and vetoed by the governor. In his veto message for House Bill 4081 (last session's version of House Bill 4173),¹ Governor Snyder stated that the bill would have removed administrative rules that have allowed charitable gaming activities to grow and operate in a controlled environment that protects the public welfare. Moreover, he argued that enactment of the bill would have returned "millionaire parties" to an underregulated market ripe with potential for fraud and abuse.

FISCAL INFORMATION:

The bill would increase administrative, regulatory, and audit costs for MGCB as the entity charged with oversight of the millionaire parties. The magnitude of the increased costs is unknown, but likely minimal compared to current costs. Under the provisions of the bill, the executive director of MGCB would be required to promulgate new rules and increase oversight of millionaire parties. These additional costs would be offset by the collection of licensing fees for millionaire parties and suppliers and charity game ticket sales (deposited in the State Lottery Fund).

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130292/Veto%20Letter%204081%20&%2035.pdf

Current statute limits necessary expenses to the total revenues received from the sale of charity game tickets and all fees collected. Any revenues from charity ticket sales and licensing fees remaining at the close of the fiscal year after covering necessary expenses must be deposited in the General Fund. In connection, the annual appropriation act includes boilerplate authorizing up to \$3.0 million to cover MGCB's necessary expenses associated with the licensing and regulation of millionaire parties. According to the Lottery annual report, MGCB's necessary expenses in FY 2017-18 for the licensing and regulation of millionaire parties totaled approximately \$2.7 million.

POSITIONS:

A representative of the Laingsburg Lions Club testified in support of the bill. (3-12-19)

The following organizations indicated support for the bill (3-12-19):

Michigan Gaming Control Board
Michigan Thoroughbred Owners and Breeders Association
Knights of Columbus Council 10004
Michigan Charitable Gaming Association
City of Detroit

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.