

Legislative Analysis



CHARITABLE GAMING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4081 as enrolled
Sponsor: Rep. Tom Barrett

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

Senate Bill 35 as enrolled
Sponsor: Sen. Rick Jones

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 5-3-19

(Vetoed by the Governor 12-28-18)

SUMMARY:

Senate Bill 35 would amend the Traxler-McCauley-Law-Bowman Bingo Act (“the 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.

House Bill 4081 would 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 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 MGCB in 2014.

Definitions

As used in the Act both currently and under the bills, *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 (SB 35)

Generally speaking, the changes Senate Bill 35 would make to the existing provisions of the Bingo Act—newly designated as Article 1—are 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.

Penalties

Currently and under the bill, a person who willfully violates the Act is guilty of a misdemeanor punishable by imprisonment for up to six months or a fine of up to \$1,000, or both. However, under the bill, a person who did any of the following would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,500, or both:

- Cheated at an event.
- Used millionaire party proceeds for something other than the lawful purpose of the qualified organization.
- Knowingly made a wager if the person is under 18 years old or permitted such a person to make a wager.
- Used chips not authorized for use at a millionaire party.
- Willfully failed to appear before or provide an item to the executive director at the time and place specified in a subpoena.
- Willfully refused, 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, made or received 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.)
- Conducted without a license, or permitted 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.

Repealers

Sections 10a, 10b, and 20 of the 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. Generally speaking, the provisions of these sections have been incorporated into the new Article 2 proposed by HB 4081.

MCL 432.102 et seq.

Article 2: Millionaire parties (HB 4081)

Millionaire party license

Under House Bill 4081, 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. The executive director could not issue licenses that would allow more than two events to be conducted on the same day or that would allow more than four events to be conducted at a location in one week. 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 has paid a fee to the executive director of \$50 per day that the applicant proposes to conduct the millionaire party if there is no reason to deny the license under section 18 of the Act (which provides for license forfeiture and ineligibility for violations of the act or certain other gambling offenses).

Under extreme hardship conditions (as determined by the executive director), the executive director could waive one or more of the requirements for a person to be designated a qualified organization and issue a license to the person if all of the following conditions were met:

- The person is a nonprofit organization.
- The entire proceeds of the event, less the actual reasonable expense of conducting the event, are donated or used for a charitable purpose, organization, or cause.
- No individual connected with the management of the event is compensated in any manner for his or her participation.
- The person has complied, and will comply, with the other provisions of Article 2 and rules promulgated under Article 2.

Similarly, under extreme hardship conditions, the executive director could allow an individual, or a group of individuals, who met the above conditions (with the exception of being a nonprofit organization) to obtain a license to conduct a millionaire party.

Operation of an event

A licensee would have to ensure that an event is conducted in compliance with the 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 each day under the license. However, if the licensee conducted the event without using dealers from a supplier and owned the location at which the event was held, and if the license

were for fewer than four days of gaming, the daily limit would be determined by dividing \$80,000 by the number of days of gaming allowed 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. Only wagering on a game of chance conducted in the demarcated area would be allowed. A licensee could not allow wagers to be placed on an athletic event or a game involving personal skill. 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 a purpose that would qualify an organization to be exempt from taxation under section 501(c) of the Internal Revenue Code.

Unless permitted by the Act, a rule promulgated under Article 2, 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 \$1,000 for each event.
 - 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.

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 require the executive director of MGCB to promulgate rules under the Administrative Procedures Act. Any rules promulgated by the executive director under the Act before the bill's effective date would be rescinded.

Enforcement of Article 2

The executive director of 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. A person whose license was revoked would be ineligible for a license for five years.

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 could impose a civil penalty of up to \$2,500 for each violation of the Act or rules promulgated or orders issued under the Act. In addition to the civil penalty, a person could be liable for a fine of up to the amount of any illegal payments made or received. The bill specifies the joint and several liability that would pertain to various parties with regard to fines or penalties under these provisions.

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.

Proposed MCL 432.132 et seq.

BACKGROUND INFORMATION:

For many charities, revenue earned at millionaire parties represents a significant portion of annual budgets. This is money that typically goes back into the community through a variety of service programs, assistance, and youth educational or sports programs. Many veterans,

seniors, and low-income residents in particular benefit from the many programs supported by area nonprofits. Yet supporters of these charities say that they saw their revenue potential greatly curtailed by some of the administrative rules promulgated by MGCB after that agency took over regulation of millionaire parties. Though abuses connected to operation of millionaire parties have been reduced since MGCB took over, many charities contend that some of the rules, and how they have been enforced, are draconian and make it difficult for the charities, whose fundraising efforts are typically run by volunteers, to comply or to make enough profits to support their community projects.

Charitable gaming as a fundraising tool for nonprofits has been authorized in Michigan since enactment of the Traxler-McCauley-Law-Bowman Bingo Act in 1972 allowed charities to begin to conduct bingo games in 1973. Besides bingo, charities considered to be a “qualified organization” may conduct large and small raffles, sell charity game or numeral game tickets, and conduct millionaire parties. A charity was allowed up to four event licenses a year, with each event lasting up to four consecutive days. Also called “Las Vegas Nights,” millionaire parties were typically sponsored by churches and fraternal organizations. They were popular because they could offer certain casino-style games, award both cash and merchandise as prizes, and sell charity tickets and conduct raffles. The landscape of millionaire parties changed in 2004, however, when Texas Hold ’Em, a popular poker game, was allowed to be included in the games offered at millionaire parties.

Texas Hold ’Em proved to be popular both for the charities and for attendees. For the host charity, a millionaire party featuring only Texas Hold ’Em was less expensive to host, needed fewer members to be present to run an event, and could generate more revenue at a single event than other fundraising efforts. Attendees had the chance to hone their poker skills (useful at casinos and poker tournaments) and to vie for higher prize payouts than at other fundraising events. Texas Hold ’Em charity events became so popular that the Michigan Lottery Charity Gaming Division saw an 8.5% increase for requests for millionaire party licenses in FY 2004, the first year Texas Hold ’Em was allowed, from the previous fiscal year—the first increase since 1993—and saw the number of requests double at least four times by 2009.

The problem, according to some, is that because the Bingo Act predated the addition of Texas Hold ’Em to millionaire parties and did not contain provisions that adequately regulated the new game to prevent abuses, fraudulent practices began to flourish. With nightly chip sales of up to \$15,000 per event, some bars and other establishments began renting out space for Texas Hold ’Em to charities. However, problems began to arise with chips from different charities conducting events at the same location being commingled. Other problems included events at which no members of the host charity were in attendance (meaning that the location owners or staff were conducting the charity games); location owners supplying dealers and equipment; and location owners or their employees handling the money from the sale of chips, doing the recordkeeping, and submitting the required reports to the Lottery Bureau. Reports of abuses began surfacing, including reports of location owners and suppliers skimming profits from the charities and even creating charities for the sole purpose of operating millionaire parties for their own—and not a charitable—purpose. In essence, unlicensed poker rooms were now offering, under the guise of charitable gaming, large-scale gambling.

In an attempt to discourage such abuses, Governor Snyder in 2012 transferred regulatory authority over millionaire parties from the Bureau of State Lottery to the executive director of MGCB, the same agency that oversees the Detroit casinos. In the years that ensued, a temporary

moratorium was placed on approving new licenses and locations, new administrative rules were issued and then blocked from enforcement due to court challenges, and a smaller set of emergency rules enacted. To MGCB, the emergency rules brought order, stemmed the abuses, and stabilized the millionaire party charity gaming revenue at about \$94.0 to \$95.0 million a year. As noted earlier, charities complain that the rules contain some onerous provisions that they believe stifle their ability to raise funds through conducting millionaire parties. Some charities report decreased revenue of 30% or more since the emergency rules have taken effect.

Last session, legislation to codify the emergency rules, with some changes to address the concerns of charities (SB 187 and HB 4293), failed to pass both chambers. Legislation has again been offered.

FISCAL IMPACT:

The bills 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 the 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).

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 shall be deposited in the General Fund. In connection, the annual appropriation act includes boilerplate authorizing up to \$4.0 million to cover MGCB's necessary expenses associated with licensing and regulation of millionaire parties. According to the Lottery annual report, MGCB necessary expenses in FY 2015-16 for the licensing and regulation of millionaire parties totaled approximately \$2.6 million.

Vetoed 12-18-18:

In his veto message for House Bill 4081 and Senate Bill 35,¹ Governor Snyder stated that the bills 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 bills would “return millionaire parties to an underregulated market ripe with potential for fraud and abuse.”

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■ 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.

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