

1 AN ACT relating to charitable gaming.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS 238.505 IS REPEALED AND REENACTED TO READ  
4 AS FOLLOWS:

5 *As used in this chapter:*

- 6 *(1) "Adjusted gross receipts" means gross receipts less all cash prizes and the*  
7 *amount paid for merchandise prizes purchased;*
- 8 *(2) "Affiliate" means any corporation, partnership, association, or other business or*  
9 *professional entity or any natural person that directly or indirectly, through one*  
10 *(1) or more intermediaries, controls, or is controlled by, or is under common*  
11 *control with a licensed manufacturer, distributor, or charitable gaming facility;*
- 12 *(3) "Bingo" means a specific game of chance in which participants use cards or*  
13 *paper sheets, or card-minding device representations thereof, divided into*  
14 *horizontal and vertical spaces, each of which is designated by a letter and a*  
15 *number, and prizes are awarded on the basis of the letters and numbers on the*  
16 *card conforming to a predetermined and preannounced configuration of letters*  
17 *and numbers selected at random;*
- 18 *(4) "Card-minding device" means any mechanical, electronic, electromechanical, or*  
19 *computerized device that is interfaced with or connected to equipment used to*  
20 *conduct a game of bingo and that allows a player to store, display, and mark a*  
21 *bingo card face. A card-minding device shall not be designed and manufactured*  
22 *to resemble any electronic gaming device that utilizes a video display monitor,*  
23 *such as a video lottery terminal, video slot machine, video poker machine, or any*  
24 *similar video gaming device;*
- 25 *(5) "Chairperson" means the chief executive officer and any officer, member, or*  
26 *employee of a licensed charitable organization who will be involved in the*  
27 *management and supervision of charitable gaming as designated in the*

1 organization's charitable gaming license application under subsection (13)(g) of  
2 Section 4 of this Act;

3 (6) (a) "Charitable gaming" means bingo, charity game tickets, raffles, and  
4 charity fundraising events conducted for fundraising purposes by charitable  
5 organizations licensed and regulated under the provisions of this chapter.

6 (b) "Charitable gaming" does not include slot machines, electronic video  
7 gaming devices, wagering on live sporting events, or simulcast broadcasts of  
8 horse races;

9 (7) "Charitable gaming facility" means the premises on which charitable gaming is  
10 conducted;

11 (8) (a) "Charitable gaming supplies and equipment" means any material, device,  
12 apparatus, or paraphernalia customarily used in the conduct of charitable  
13 gaming, including bingo cards and paper, charity game tickets, and other  
14 apparatus or paraphernalia used in conducting games of chance at charity  
15 fundraising events subject to regulation under this chapter.

16 (b) "Charitable gaming supplies and equipment" does not include any  
17 material, device, apparatus, or paraphernalia incidental to the game, such  
18 as pencils, daubers, playing cards, or other supplies that may be purchased  
19 from normal sources of supply;

20 (9) "Charitable organization" means a nonprofit entity organized for charitable,  
21 religious, educational, literary, civic, fraternal, or patriotic purposes;

22 (10) "Charity fundraising event" means an activity of limited duration at which  
23 games of chance approved by the department are conducted, including bingo,  
24 raffles, charity game tickets, special limited charitable games, and wagering on  
25 prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such  
26 activities include events that attract patrons for community, social, and  
27 entertainment purposes apart from charitable gaming, such as fairs, festivals,

1 carnivals, licensed charitable gaming organization conventions, bazaars, and  
2 banquets. For the purposes of this subsection, "banquet" means a formal meal or  
3 feast held by a charitable organization for community, social, or entertainment  
4 purposes apart from charitable gaming;

5 (11) (a) "Charity game ticket" means a game of chance using a folded or banded  
6 paper ticket, or a paper card with perforated break-open tabs, or electronic  
7 pulltab device representations thereof, the face of which is covered or  
8 otherwise hidden from view to conceal a number, letter, symbol, or set of  
9 numbers, letters, or symbols, some of which have been designated in  
10 advance as prize winners and shall include charity game tickets that utilize  
11 a seal card.

12 (b) "Charity game ticket" includes pulltabs, both paper and electronic  
13 representations thereof;

14 (12) "Commissioner" means the commissioner of the Department of Charitable  
15 Gaming within the Public Protection Cabinet;

16 (13) "Department" means the Department of Charitable Gaming within the Public  
17 Protection Cabinet;

18 (14) (a) "Distributor" means a person who sells, markets, leases, or otherwise  
19 furnishes to a charitable organization charitable gaming equipment or  
20 supplies, or both, used in the conduct of charitable gaming.

21 (b) "Distributor" does not include:

22 1. A resident printer who prints raffle tickets at the request of a licensed  
23 charitable organization; and

24 2. A licensed charitable organization that affects a one-time donation of  
25 charitable gaming supplies or equipment to another licensed  
26 charitable organization if the donation is first approved by the  
27 department;

- 1 (15) "Door prize" means a prize awarded to a person based solely upon the person's  
2 attendance at an event or the purchase of a ticket to attend an event;
- 3 (16) "Electronic pulltab device" means an electronic device used only for charitable  
4 gaming to facilitate the play of an electronic pulltab. An electronic pulltab device  
5 shall be a tablet or other personal computing device, other than a mobile phone  
6 or similar handheld device, as approved by the department. An electronic pulltab  
7 device may only operate on a closed network or intranet that is confined to the  
8 licensee's premises, and shall not be internet-accessible by patrons, but shall be  
9 connected to a central server system solely for the purposes of monitoring,  
10 reporting, accounting, and software maintenance. An electronic pulltab device  
11 shall not be designed and manufactured to resemble any electronic gaming device  
12 that utilizes a video display monitor, such as a video lottery terminal, video slot  
13 machine, video poker machine, or any similar video gaming device;
- 14 (17) (a) "Electronic video gaming device" means any device that possesses a video  
15 display and computer mechanism for playing a game.
- 16 (b) "Electronic video gaming device" does not mean any electronic  
17 representation of charitable gaming games identified, defined, and  
18 approved by statute and by administrative regulation of the department;
- 19 (18) "Gross receipts" means all moneys collected or received from the conduct of  
20 charitable gaming;
- 21 (19) "Immediate family" means:
- 22 (a) Spouse and parents-in-law;
- 23 (b) Parents and grandparents;
- 24 (c) Children and their spouses; and
- 25 (d) Siblings and their spouses;
- 26 (20) (a) "Manufacturer" means a person who assembles from raw materials or  
27 subparts any charitable gaming equipment or supplies used in the conduct

1 of charitable gaming, including a person who converts, modifies, and adds  
2 to or removes parts from, charitable gaming equipment and supplies.

3 (b) "Manufacturer" does not include:

4 1. Any person who services or repairs charitable gaming supplies and  
5 equipment, so long as that person replaces or repairs an incidental,  
6 malfunctioning, or nonfunctioning part with a similar or identical  
7 part; and

8 2. Any distributor who cuts, collates, and packages for distribution any  
9 gaming supplies and equipment purchased in bulk;

10 (21) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and  
11 deductions authorized under this chapter;

12 (22) "Raffle" means a game of chance in which a participant is required to purchase  
13 a ticket for a chance to win a prize, with the winner to be determined by a random  
14 drawing;

15 (23) "Seal card" means a board or placard used in conjunction with charity game  
16 tickets, that contains a seal or seals which, when removed or opened, reveal  
17 predesignated winning numbers, letters, or symbols;

18 (24) "Secretary" means the secretary of the Public Protection Cabinet;

19 (25) "Session" or "bingo session" means a single gathering at which a bingo game or  
20 series of successive bingo games are played, excluding bingo played at a charity  
21 fundraising event;

22 (26) "Special limited charitable game" means roulette; blackjack; poker; keno;  
23 money wheel; baccarat; pusher-type games; any dice game where the player  
24 competes against the house; and any other game of chance as identified, defined,  
25 and approved through promulgation of an administrative regulation by the  
26 department;

27 (27) "Special limited charity fundraising event" means any type of charity

1 fundraising event, commonly known as and operated as a "casino night," "Las  
 2 Vegas night," or "Monte Carlo night," at which the predominant number or  
 3 types of games offered for play are special limited charitable games; and  
 4 (28) "Year" means calendar year, except as used in subsection (11) of Section 4 of  
 5 this Act, subsection (4) of Section 7 of this Act, 238.547(1), and 238.555(7), when  
 6 "year" means the licensee's license year.

7 ➔Section 2. KRS 238.520 is amended to read as follows:

- 8 (1) The Charitable Gaming Advisory Commission is created to be composed of nine  
 9 (9) members consisting of:
- 10 (a) The secretary of the Public Protection Cabinet or ~~his~~ designee;
  - 11 (b) The Attorney General or ~~his~~ designee;
  - 12 (c) One (1) representative from the Kentucky Commonwealth's Attorneys  
 13 Association;
  - 14 ~~(d) One (1) representative from the Kentucky Charitable Gaming Association;~~
  - 15 ~~(e) One (1) certified public accountant;~~
  - 16 ~~(f) One (1) certified public accountant;~~ **Two (2) members**~~One (1) member~~ selected from the public at large;
  - 17 ~~(g) One (1) representative selected~~ **One (1) representative** from the Joint Executive Council of  
 18 Veterans Organizations of Kentucky;
  - 19 ~~(h) One (1) representative from Catholic organizations; and~~
  - 20 ~~(i) One (1) representative from Kentucky's volunteer firefighter~~  
 21 ~~organizations.~~

22 The certified public accountant ~~and~~ the **two (2)**~~one (1)~~ at-large  
 23 **members**~~member, and the representatives from the Kentucky Commonwealth's~~  
 24 ~~Attorneys Association and the Kentucky Charitable Gaming Association~~ shall be  
 25 appointed by the Governor. The representative from **the Kentucky**  
 26 **Commonwealth's Attorneys Association**~~each of the two (2) associations~~, the ~~one~~  
 27 ~~(1) representative from the~~ Joint Executive Council of Veterans Organizations of

1 Kentucky, ~~[the one (1) representative from]~~ the Catholic organizations, and ~~[the one~~  
2 ~~(1) representative from]~~ the volunteer firefighter organizations shall ***each*** be  
3 selected from a list of at least three (3) names submitted to the Governor by the  
4 respective association.

5 (2) ~~[Initial appointments to the commission shall be for staggered terms as follows: one~~  
6 ~~(1) member for a term of one (1) year; two (2) members for a term of two (2) years;~~  
7 ~~two (2) members for a term of three (3) years; and two (2) members for a term of~~  
8 ~~four (4) years. Thereafter, ]~~Each member shall be appointed for a term of four (4)  
9 years. ~~[No member from the public at large shall be appointed in the same year.]~~  
10 Vacancies shall be filled in the same manner as the original appointment for the  
11 unexpired portion of the term. No member of the commission may serve more than  
12 two (2) full terms.

13 (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and  
14 input to the department and to the General Assembly but shall not become directly  
15 involved in the licensing and regulation of charitable gaming by the department.

16 (4) The commission shall meet ***semiannually*** ~~[quarterly]~~, upon the request of the chair  
17 or four (4) of its members or as otherwise directed by the department. Five (5)  
18 members shall constitute a quorum for conducting business. The commission shall  
19 annually elect a ***chair*** ~~[chairman]~~ from its membership, and no person elected  
20 ***chair*** ~~[chairman]~~ shall serve more than two (2) consecutive terms of one (1) year  
21 each. Members shall receive no compensation for serving on the commission, but  
22 shall be reimbursed for travel expenses for attending meetings and performing other  
23 official functions, consistent with state reimbursement policy for state employees.

24 ➔Section 3. KRS 238.525 is amended to read as follows:

25 (1) Licenses shall be issued by the department on an annual or biennial basis, except as  
26 otherwise permitted in KRS 238.530 and 238.545. A license term may be  
27 determined by the department in any manner it deems appropriate to facilitate

1 efficient licensing. The department shall charge a renewal fee not to exceed the  
2 maximum amounts established in KRS 238.530, 238.535, and 238.555.

3 (2) The department may issue a temporary license to an applicant who has met the  
4 requirements for a license. A temporary license shall be valid from the date of  
5 issuance until the regular license is issued or for a period of sixty (60) days,  
6 whichever is shorter. A temporary license shall not be renewed, except for good  
7 cause and shall not exceed a total of nine (9) months in length.

8 (3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be  
9 subjected to a state and national criminal history background check by the  
10 department, with the assistance of the Department of Kentucky State Police and the  
11 Federal Bureau of Investigation. An applicant for any license to be issued under  
12 KRS 238.535 shall be subjected to a state criminal history background check and  
13 may, if deemed reasonably necessary, be subjected to a national criminal history  
14 background check by the department with the assistance of the Department of  
15 Kentucky State Police and the Federal Bureau of Investigation. The criminal history  
16 background check shall apply to the chief executive officer and the chief financial  
17 officer or director of an applicant; any employee or member of an applicant who  
18 has been designated as chairperson of the charitable gaming activity; the applicant  
19 itself; and any individual with a ten percent (10%) or more financial interest in the  
20 applicant~~. The department shall require the fingerprinting of all applicants for~~  
21 ~~licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably~~  
22 ~~necessary, the fingerprints of all applicants for licensure under KRS 238.535, who~~  
23 ~~are natural persons in connection with the national criminal history background~~  
24 ~~check to assure the identity of the applicant or applicants]. The department may~~  
25 charge a reasonable fee not to exceed the actual cost of ~~fingerprinting and~~ records  
26 searching.

27 (4) No applicant shall be licensed and no license holder shall be able to maintain a



1 license if an individual associated with the applicant or license holder in a capacity  
2 listed in subsection (3) of this section or the applicant or license holder itself has  
3 been convicted of a felony, gambling offense, criminal fraud, forgery, theft,  
4 falsifying business records, violation of KRS 238.995(7), or any two (2)  
5 misdemeanor crimes in federal court or the courts of any state, the District of  
6 Columbia, or any territory, consistent with the provisions of KRS Chapter 335B  
7 within ten (10) years preceding the application for licensure.

8 (5) **An applicant for any license to be issued under KRS 238.530 or 238.555 shall**  
9 **disclose to the department if the applicant or any of its officers or individuals with**  
10 **a ten percent (10%) or greater financial interest in the applicant has been found**  
11 **to have committed any administrative violations, been found civilly liable, or had**  
12 **its license to operate as a manufacturer, distributor, or charitable gaming facility**  
13 **revoked or suspended in any other jurisdiction in which is it licensed. The**  
14 **department may revoke a license or deny an application for a license issued**  
15 **under KRS 238.530 or 238.555 based on the disclosures made pursuant to this**  
16 **subsection**~~[No applicant shall be licensed unless all applicants required to be~~  
17 ~~fingerprinted under the provision of subsection (3) of this section have been~~  
18 ~~fingerprinted. The Department of Kentucky State Police may submit fingerprints of~~  
19 ~~any applicant to the Federal Bureau of Investigation for the national criminal~~  
20 ~~history background check. The department may by administrative regulation~~  
21 ~~impose additional qualifications to meet the requirements of Pub. L. 92-544].~~

22 (6) If a change occurs in any information submitted during the license application  
23 process, the applicant or licensee shall notify the department in writing within thirty  
24 (30) days of the date the change occurred.

25 ➔Section 4. KRS 238.535 is amended to read as follows:

26 (1) Any charitable organization conducting charitable gaming in the Commonwealth of  
27 Kentucky shall be licensed by the department. A charitable organization qualifying

1 under subsection (12) of this section but not exceeding the limitations provided in  
2 this subsection shall be exempt from the licensure requirements when conducting  
3 the following charitable gaming activities:

- 4 (a) Bingo in which the gross receipts do not exceed a total of twenty-five  
5 thousand dollars (\$25,000) per year;
- 6 (b) A raffle or raffles for which the gross receipts do not exceed twenty-five  
7 thousand dollars (\$25,000) per year; and
- 8 (c) A charity fundraising event or events that do not involve special limited  
9 charitable games and the gross gaming receipts for which do not exceed  
10 twenty-five thousand dollars (\$25,000) per year.

11 However, at no time shall a charitable organization's total limitations under this  
12 subsection exceed twenty-five thousand dollars (\$25,000).

- 13 (2) (a) Any charitable organization exempt from the process of applying for a license  
14 under subsection (1) of this section, shall notify the department in writing, on  
15 a simple form issued by the department, of its intent to engage in exempt  
16 charitable gaming and the address at which the gaming is to occur. Any  
17 charitable organization exempt from the process of applying for a license  
18 under subsection (1) of this section, shall comply with all other provisions of  
19 this chapter relating to the conduct of charitable gaming, except:
- 20 1. Payment of the fee imposed under the provisions of KRS 238.570; and
- 21 2. The quarterly reporting requirements imposed under the provisions of  
22 KRS 238.550(7), unless the exempt charitable organization obtains a  
23 retroactive license pursuant to subsection (9) of this section.
- 24 (b) Before January 31 of the year immediately following the year of exemption, a  
25 charitable organization exempt from licensure under the provisions of  
26 subsection (1) of this section shall file a financial report with the department,  
27 on a form issued by the department, that contains the following information:

- 1           1.    The type of gaming activity in which it engaged during that year;
  - 2           2.    The total gross receipts derived from gaming;
  - 3           3.    The amount of charitable gaming expenses paid;
  - 4           4.    The amount of net receipts derived; and
  - 5           5.    The disposition of those net receipts.
- 6 (3) An exemption that has been granted to a charitable organization for the preceding  
7 calendar year shall be automatically renewed on January 1 of the following year.
- 8 (4) If upon receipt of the financial report the department determines that the  
9 information appearing on the financial report renders the charitable organization  
10 ineligible to possess an exemption, the department shall notify the charitable  
11 organization that its exemption is rescinded. The organization may request an  
12 appeal of this rescission pursuant to KRS 238.565.
- 13 (5) If the annual financial report is not received by January 31, the exemption is  
14 automatically rescinded unless an extension of no more than thirty (30) days is  
15 granted by the department. The organization may request an appeal of this  
16 rescission pursuant to KRS 238.565.
- 17 (6) If an exemption is revoked because an organization has exceeded the limit imposed  
18 in subsection (1) of this section, the organization shall apply for a retroactive  
19 license in accordance with subsection (7) of this section.
- 20 (7) If an organization exceeds the limit imposed by any subsection of this section it  
21 shall:
- 22           (a) Report the amount to the department; and
  - 23           (b) Apply for a retroactive charitable gaming license.
- 24 (8) Upon receipt of a report and application for a retroactive charitable gaming license,  
25 the department shall investigate to determine if the organization is otherwise  
26 qualified to hold the license.
- 27 (9) If the department determines that the applicant is qualified, it shall issue a charitable

1 gaming license retroactive to the date on which the exemption limit was exceeded.

2 The retroactive charitable gaming license shall be issued in the same manner as  
3 regular charitable gaming licenses.

4 (10) If the department determines that the applicant is not qualified it shall deny the  
5 license and take enforcement action, if appropriate.

6 (11) Once a retroactive or regular gaming license is issued to an organization, that  
7 organization shall not be eligible for exempt status in the future and shall maintain a  
8 charitable gaming license if it intends to continue charitable gaming activities,  
9 unless the charitable organization has not exceeded the exemption limitations of  
10 subsection (1) of this section for a period of two (2) years prior to its exemption  
11 request.

12 (12) (a) In order to qualify for licensure, a charitable organization shall:

13 1. a. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3),  
14 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered  
15 under a group ruling issued by the Internal Revenue Service under  
16 authority of those sections; or

17 b. Be organized within the Commonwealth of Kentucky as a  
18 common school as defined in KRS 158.030, as an institution of  
19 higher education as defined in KRS 164A.305, or as a state college  
20 or university as provided for in KRS 164.290;

21 2. Have been established and continuously operating within the  
22 Commonwealth of Kentucky for charitable purposes, other than the  
23 conduct of charitable gaming, for a period of three (3) years prior to  
24 application for licensure. For purposes of this paragraph, an applicant  
25 shall demonstrate establishment and continuous operation in Kentucky  
26 by its conduct of charitable activities from an office physically located  
27 within Kentucky both during the three (3) years immediately preceding

1 its application for licensure and at all times during which it possesses a  
2 charitable gaming license. However, a charitable organization that  
3 operates for charitable purposes in more than ten (10) states and whose  
4 principal place of business is physically located in a state other than  
5 Kentucky may satisfy the requirements of this paragraph if it can  
6 document that it has:

7 a. Been actively engaged in charitable activities and has made  
8 reasonable progress, as defined in subparagraph 3. of this  
9 paragraph, in the conduct of charitable activities or the expenditure  
10 of funds within Kentucky for a period of three (3) years prior to  
11 application for licensure; and

12 b. Operated for charitable purposes from an office or place of  
13 business in the Kentucky county where it proposes to conduct  
14 charitable gaming for at least one (1) year prior to application for  
15 licensure, in accordance with subparagraph 4. of this paragraph ~~and~~  
16 ~~and paragraph (c) of this subsection];~~

17 3. Have been actively engaged in charitable activities during the three (3)  
18 years immediately prior to application for licensure and be able to  
19 demonstrate, to the satisfaction of the department, reasonable progress  
20 in accomplishing its charitable purposes during this period. As used in  
21 this paragraph, "reasonable progress in accomplishing its charitable  
22 purposes" means the regular and uninterrupted conduct of activities  
23 within the Commonwealth or the expenditure of funds within the  
24 Commonwealth to accomplish relief of poverty, advancement of  
25 education, protection of health, relief from disease, relief from suffering  
26 or distress, protection of the environment, conservation of wildlife,  
27 advancement of civic, governmental, or municipal purposes, or

1 advancement of those purposes delineated in KRS 238.505(2)~~(3)~~. In  
 2 order to demonstrate reasonable progress in accomplishing its charitable  
 3 purposes when applying to renew an existing license, a licensed  
 4 charitable organization shall additionally provide to the department a  
 5 detailed accounting regarding its expenditure of charitable gaming net  
 6 receipts for the purposes described in this paragraph; and

7 4. Have maintained an office or place of business, other than for the  
 8 conduct of charitable gaming, for at least one (1) year in the county in  
 9 which charitable gaming is to be conducted. The office or place of  
 10 business shall be a separate and distinct address and location from that  
 11 of any other licensee of the department~~[of Charitable Gaming]~~; except  
 12 that up to three (3) licensed charitable organizations may have the same  
 13 address if they legitimately share office space. **A licensed charitable**  
 14 **organization that relocates its office or place of business to another**  
 15 **Kentucky county after obtaining a charitable gaming license shall not**  
 16 **be required to have maintained an office or place of business in the**  
 17 **county to which it has relocated for at least one (1) year in order to**  
 18 **renew its charitable gaming license and conduct charitable gaming in**  
 19 **the county.**

20 (b) 1. A charitable organization that has established and maintained an office  
 21 or place of business in the county for a period of at least one (1) year  
 22 may hold a raffle drawing or a charity fundraising event, including  
 23 special limited charity fundraising events, in a Kentucky county other  
 24 than that in which the organization's office or place of business is  
 25 located.

26 2. For raffles, the organization shall notify the department~~[of Charitable~~  
 27 ~~Gaming]~~ in writing of the organization's intent to change the drawing's

1 location at least thirty (30) days before the drawing takes place. This  
2 written notification:

- 3 a. May be transmitted in any commercially reasonable means,  
4 authorized by the department, including facsimile and electronic  
5 mail; and  
6 b. Shall set out the place and the county in which the drawing will  
7 take place.

8 Approval by the department shall be received prior to the conduct of the  
9 raffle drawing at the new location.

- 10 (c) A charitable organization licensed under this chapter may conduct  
11 charitable gaming at a charitable gaming facility located in a county  
12 contiguous to the county where the organization's office or place of  
13 business is located~~[Any charitable organization that was registered with the~~  
14 ~~county clerk to conduct charitable gaming in a county on or before March 31,~~  
15 ~~1992, shall satisfy the requirement contained in paragraph (a)4. of this~~  
16 ~~subsection if it maintained a place of business or operation, other than for the~~  
17 ~~conduct of charitable gaming, for one (1) year prior to application in a~~  
18 ~~Kentucky county adjoining the county in which they were registered].~~

19 (13) In applying for a license, the information to be submitted shall include but not be  
20 limited to the following:

- 21 (a) The name and address of the charitable organization;  
22 (b) The date of the charitable organization's establishment in the Commonwealth  
23 of Kentucky and the date of establishment in the county or counties in which  
24 charitable gaming is to be conducted;  
25 (c) A statement of the charitable purpose or purposes for which the organization  
26 was organized. If the charitable organization is incorporated, a copy of the  
27 articles of incorporation shall satisfy this requirement;

- 1 (d) A statement explaining the organizational structure and management of the  
2 organization. For incorporated entities, a copy of the organizations' bylaws  
3 shall satisfy this requirement;
- 4 (e) A detailed accounting of the charitable activities in which the charitable  
5 organization has been engaged for the three (3) years preceding application  
6 for licensure;
- 7 (f) The names, addresses, dates of birth, and Social Security numbers of all  
8 officers of the organization;
- 9 (g) The names, addresses, dates of birth, and Social Security numbers of all  
10 employees and members of the charitable organization who will be involved  
11 in the management and supervision of charitable gaming. No fewer than two  
12 (2) employees or members of the charitable organization who are involved in  
13 the management and supervision of charitable gaming, along with the chief  
14 executive officer or the director of the applicant organization, shall be  
15 designated as chairpersons;
- 16 (h) The address of the location at which charitable gaming will be conducted and  
17 the name and address of the owner of the property, if it is owned by a person  
18 other than the charitable organization;
- 19 (i) A copy of the letter or other legal document issued by the Internal Revenue  
20 Service to grant tax-exempt status;
- 21 (j) A statement signed by the presiding or other responsible officer of the  
22 charitable organization attesting that the information submitted in the  
23 application is true and correct and that the organization agrees to comply with  
24 all applicable laws and administrative regulations regarding charitable  
25 gaming;
- 26 (k) An agreement that the charitable organization's records may be released by  
27 the Federal Internal Revenue Service to the department; and



1 (l) Any other information the department deems appropriate.

2 (14)~~[(a)]~~ An organization or a group of individuals that does not meet the licensing  
3 requirements of subsection (12) of this section may hold a raffle if:

4 ~~(a)~~<sup>[1-]</sup> The gross receipts do not exceed five hundred dollars (\$500);

5 ~~(b)~~<sup>[2-]</sup> All proceeds from the raffle are distributed to a charitable organization;  
6 and

7 ~~(c)~~<sup>[3-]</sup> The organization or group of individuals holds no more than three (3)  
8 raffles each year;

9 and shall be exempt from complying with the notification, application, and  
10 reporting requirements of subsections (2) and (13) of this section.

11 ~~[(b) An organization or a group of individuals that does not meet the licensing  
12 requirements of subsection (12) of this section may hold a raffle if:~~

13 ~~1. The organization holds a special event raffle license issued by the  
14 department and complies with the regulatory requirements in this  
15 chapter, including but not limited to the quarterly reporting requirements  
16 of KRS 238.550(7), the retention requirements of KRS 238.536, and  
17 payment of the fee imposed by KRS 238.570;~~

18 ~~2. The organization possesses a tax exempt status under 26 U.S.C. sec.  
19 501(c)(7);~~

20 ~~3. The organization holds no more than twelve (12) raffles per year;~~

21 ~~4. Each raffle complies with the department's raffle standards in KRS  
22 238.545 and administrative regulations promulgated thereunder and is  
23 approved by the department in writing prior to the sale of the first raffle  
24 ticket;~~

25 ~~5. The gross receipts of each raffle do not exceed five hundred thousand  
26 dollars (\$500,000); and~~

27 ~~6. One hundred percent (100%) of the net receipts of each raffle shall be~~

1 ~~distributed to a charitable organization licensed by the department~~  
2 ~~pursuant to subsection (12) of this section to conduct charitable gaming~~  
3 ~~as follows:~~

4 ~~a. All distributed net receipts shall be maintained by the recipient~~  
5 ~~licensed charitable organization in a separate account to be~~  
6 ~~designated as the "raffle recipient account";~~

7 ~~b. All distributed net receipts shall be expended by the recipient~~  
8 ~~licensed charitable organization to further the charitable purpose of~~  
9 ~~the recipient licensed charitable organization as required by KRS~~  
10 ~~238.550(4); and~~

11 ~~c. All distributed net receipts, and the expenditure thereof, shall be~~  
12 ~~reported to the department and be subject to the department's~~  
13 ~~auditing and investigative authority consistent with the provisions~~  
14 ~~of this chapter.~~

15 ~~(e) An applicant qualifying under paragraph (b) of this subsection shall submit an~~  
16 ~~application for a special event raffle license, and the information to be~~  
17 ~~submitted shall include but not be limited to the following:~~

18 ~~1. The name and address of the organization;~~

19 ~~2. The date of the organization's establishment in the Commonwealth of~~  
20 ~~Kentucky and the date of the organization's establishment in the county~~  
21 ~~or counties in which charitable gaming is to be conducted;~~

22 ~~3. A statement of the purpose or purposes for which the organization was~~  
23 ~~organized and identification of the licensed charitable organization to~~  
24 ~~which the applicant will distribute its net receipts. If the organization is~~  
25 ~~incorporated, a copy of the articles of incorporation shall satisfy this~~  
26 ~~requirement;~~

27 ~~4. A statement explaining the organizational structure and management of~~

- 1           the organization. For incorporated entities, a copy of the organization's  
2           bylaws shall satisfy this requirement;
- 3           5. ~~The names, addresses, dates of birth, and Social Security numbers of all~~  
4           officers of the organization;
- 5           6. ~~The names, addresses, dates of birth, and Social Security numbers of all~~  
6           employees and members of the organization who will be involved in the  
7           management and supervision of charitable gaming. No fewer than two  
8           (2) employees or members of the organization who are involved in the  
9           management and supervision of charitable gaming, along with the chief  
10          executive officer or the director of the applicant organization, shall be  
11          designated as chairpersons;
- 12          7. ~~The address of the location at which charitable gaming will be~~  
13          conducted and the name and address of the owner of the property, if it is  
14          owned by a person other than the organization;
- 15          8. ~~A copy of the letter or other legal document issued by the Internal~~  
16          Revenue Service to grant tax exempt status;
- 17          9. ~~A statement signed by the presiding or other responsible officer of the~~  
18          organization attesting that the information submitted in the application is  
19          true and correct and that the organization agrees to comply with all  
20          applicable laws and administrative regulations regarding charitable  
21          gaming;
- 22          10. ~~An agreement that the organization's records may be released by the~~  
23          federal Internal Revenue Service to the department; and
- 24          11. ~~Any other information as determined by the department through the~~  
25          promulgation of administrative regulations.]
- 26       (15) The department may issue a license for a specified period of time, based on the type  
27          of charitable gaming involved and the desired duration of the activity.

1 (16) The department shall charge a fee for each license issued and renewed, not to  
2 exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed  
3 in a graduated scale promulgated by administrative regulations and based on type of  
4 license, type of charitable gaming, actual or projected gross receipts, or other  
5 applicable factors, or combination of factors.

6 (17) (a) A licensed charitable organization may place its charitable gaming license in  
7 escrow if:

- 8 1. The licensee notifies the department in writing that it desires to place its  
9 license in escrow; and
- 10 2. The license is in good standing and the department has not initiated  
11 disciplinary action against the licensee.

12 (b) During the escrow period, the licensee shall not engage in charitable gaming,  
13 and the escrow period shall not be included in calculating the licensee's  
14 retention rate under KRS 238.536.

15 (c) A charitable organization may apply for reinstatement of its active license and  
16 the license shall be reinstated provided:

- 17 1. The charitable organization continues to qualify for licensure;
- 18 2. The charitable organization has not engaged in charitable gaming during  
19 the escrow period; and
- 20 3. The charitable organization pays a reinstatement fee established by the  
21 department.

22 ➔Section 5. KRS 238.536 is amended to read as follows:

23 (1) The net receipts from charitable gaming retained by a charitable organization for  
24 the previous calendar year, provided the charitable organization was licensed at the  
25 start of the calendar year, shall be equal to or greater than forty percent (40%) of the  
26 adjusted gross receipts of the charitable organization for the same period. A  
27 licensed charitable organization shall expend net receipts exclusively for purposes

1 consistent with the charitable, religious, educational, literary, civic, fraternal, or  
 2 patriotic functions or objectives for which the licensed charitable organization  
 3 received and maintains federal tax-exempt status, or consistent with its status as a  
 4 common school, an institution of higher education, or a state college or university.  
 5 No net receipts shall inure to the benefits or financial gain of an individual. Any  
 6 charitable organization which permits its license to expire or otherwise lapse shall  
 7 still be subject to the retention requirement. The following fees and taxes shall be  
 8 excluded from the calculation of the percentage retained, ~~retroactive to calculations~~  
 9 ~~made for calendar year 1999~~:

- 10 (a) All fees paid to the department during the calendar year;
- 11 (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming  
 12 supplies and equipment that are paid by a licensed charitable organization  
 13 during the calendar year; and
- 14 (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid  
 15 by a licensed charitable organization during the calendar year.

16 (2) The following actions shall be imposed on a licensed charitable organization that  
 17 fails to retain the requisite percentage of adjusted gross receipts required in  
 18 subsection (1) of this section. The calculation of percentages shall be rounded to the  
 19 nearest tenth of a percent:

- 20 (a) If the percentage retained is between ***twenty-five percent (25%)*** ~~thirty-five~~  
 21 ~~percent (35%)~~ and thirty-nine and nine-tenths percent (39.9%), the licensee  
 22 shall:

23 **1.** Be placed on probation for a period of ***one (1) year***;

24 **2.** ***Within thirty (30) days of entry of the final order in the administrative***  
 25 ***action,*** ~~six (6) months and shall be required to~~ submit to the department

26 an acceptable financial plan detailing corrective actions to be taken by  
 27 the licensee to achieve the forty percent (40%) threshold by the end of

- 1 the calendar year in which the probation is imposed; and
- 2 3. Participate in a mandatory training program designed by the
- 3 department;
- 4 (b) If the percentage retained is between twenty percent (20%) and twenty-four
- 5 and nine-tenths percent (24.9%), the licensee shall:
- 6 1. Have its charitable gaming license suspended for a period of ninety
- 7 (90) days;
- 8 2. As a condition of reinstatement of its charitable gaming license,
- 9 submit to the department an acceptable financial plan detailing
- 10 corrective actions to be taken by the licensee to achieve the forty
- 11 percent (40%) threshold by the end of the calendar year in which
- 12 reinstatement is sought; and
- 13 3. Participate in a mandatory training program designed by the
- 14 department~~[thirty percent (30%) and thirty four and nine tenths percent~~
- 15 ~~(34.9%), the licensee shall be placed on probation for a period of one (1)~~
- 16 ~~year and shall be required to submit to the department a financial plan as~~
- 17 ~~described in paragraph (a) of this subsection. The department shall~~
- 18 ~~conduct a six (6) month review of the charitable gaming activities of a~~
- 19 ~~licensee placed on probation pursuant to this subsection to evaluate the~~
- 20 ~~licensee's compliance with its financial plan];~~
- 21 (c) If the percentage retained ~~is~~~~[falls]~~ between ten percent (10%) and nineteen
- 22 and nine-tenths percent (19.9%), the licensee shall:
- 23 1. Have its charitable gaming license suspended for a period of one
- 24 hundred eighty (180) days;
- 25 2. As a condition of reinstatement of its charitable gaming license,
- 26 submit to the department an acceptable financial plan detailing
- 27 corrective actions to be taken by the licensee to achieve the forty

1 percent (40%) threshold by the end of the calendar year in which  
 2 reinstatement is sought; and

3 3. Participate in a mandatory training program designed by the  
 4 department~~[twenty nine and nine tenths percent (29.9%) and twenty~~  
 5 ~~five percent (25%), the licensee shall be placed on probation for a period~~  
 6 ~~of one (1) year, shall submit to the department an acceptable financial~~  
 7 ~~plan as described in paragraph (a) of this subsection, and shall~~  
 8 ~~participate in a mandatory training program designed by the department.~~  
 9 ~~The department shall conduct a quarterly review of the licensee's~~  
 10 ~~activities to evaluate the licensee's compliance with its financial plan~~  
 11 ~~and its progress toward achievement of the forty percent (40%)~~  
 12 ~~threshold during the probationary period];~~

13 (d) If the percentage retained is~~[falls]~~ below ten percent (10%)~~[twenty five~~  
 14 ~~percent (25%)]~~ or if the licensee fails to attain the forty percent (40%)  
 15 threshold for a second consecutive calendar year, the licensee shall:

16 1. Have its charitable gaming license suspended for a period of one (1)  
 17 year;

18 2. As a condition of reinstatement of its charitable gaming license,  
 19 submit to the department an acceptable financial plan detailing  
 20 corrective actions to be taken by the licensee to achieve the forty  
 21 percent (40%) threshold by the end of the calendar year in which  
 22 reinstatement is sought; and

23 3. Participate in a mandatory training program designed by the  
 24 department; and

25 (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of  
 26 probation and suspension shall commence, unless appealed, from the date the  
 27 department notifies the licensee of its failure to satisfy the retention

1 requirement for the previous calendar year. If a probation or suspension is  
 2 appealed, the action shall commence on the date final adjudication of the  
 3 matter is complete. **If a licensee receives the one (1) year license suspension**  
 4 **required by paragraph (d) of this subsection in consecutive calendar years,**  
 5 **the second suspension period shall be imposed retroactively and run**  
 6 **concurrently with the previously imposed suspension.**

7 ~~[(3) Any licensee that has had its license suspended under the provisions of subsection~~  
 8 ~~(2)(d) of this section shall be required to submit to the department an acceptable~~  
 9 ~~financial plan as described in subsection (2)(a) of this section, upon applying for~~  
 10 ~~reinstatement of its license. As a condition of reinstatement, the licensee shall be on~~  
 11 ~~probation for a period of one (1) year and shall be subject to quarterly review by the~~  
 12 ~~department in accordance with subsection (2)(e) of this section.]~~

13 ➔Section 6. KRS 238.540 is amended to read as follows:

- 14 (1) Charitable gaming shall be conducted by a licensed charitable organization at the  
 15 location, date, and time which shall be stated on the license. The licensee shall  
 16 request a change in the date, time, or location of a charitable gaming event by mail,  
 17 electronic mail, or facsimile transmission, and shall submit a lease and an original  
 18 signature of an officer. The department shall process this request and issue or deny  
 19 a license within ten (10) days.
- 20 (2) All premises or facilities on which or in which charitable gaming is conducted shall  
 21 meet all applicable federal, state, and local code requirements relating to life, safety,  
 22 and health.
- 23 (3) A license to conduct charitable gaming shall be prominently displayed on or in the  
 24 premises where charitable gaming is conducted, in a conspicuous location that is  
 25 readily accessible to gaming patrons as well as employees of the department, law  
 26 enforcement officials, and other interested officials.
- 27 (4) At least one (1) chairperson who is listed on the application for licensure shall be at



1 each charitable gaming activity conducted by the charitable organization and shall  
2 be responsible for the administration and conduct of the charitable gaming activity.  
3 No person shall serve as chairperson for more than one (1) charitable organization.  
4 The chairperson shall be readily identifiable as the chairperson and shall be present  
5 on the premises continuously during the charitable gaming activity. Charitable  
6 gaming shall be conducted and administered solely by officers, members, and bona  
7 fide employees of the licensed charitable organization. Volunteer personnel, who  
8 may or may not be members of the licensed charitable organization, may be utilized  
9 if each volunteer is readily identifiable as a volunteer. No person engaged in the  
10 conduct and administration of charitable gaming shall receive any compensation for  
11 services related to the charitable gaming activities, including tipping. No net  
12 receipts derived from charitable gaming shall inure to the private benefit or  
13 financial gain of any individual. Any effort or attempt to disguise any other type of  
14 compensation or private inurement shall be considered an unauthorized diversion of  
15 funds and shall be actionable under KRS 238.995.

16 (5) No licensed charitable organization shall contract with, or otherwise utilize the  
17 services of, any management company, service company, or consultant in managing  
18 or conducting any aspect of charitable gaming.

19 (6) A licensed charitable organization shall not purchase or lease charitable gaming  
20 supplies and equipment from any person not licensed as a distributor in the  
21 Commonwealth of Kentucky.

22 (7) A licensed charitable organization shall not accept any merchandise prizes donated  
23 by any owner, officer, employee, or contractee of a licensed manufacturer,  
24 distributor, charitable gaming facility, or any of their affiliates, or any member of  
25 their immediate families.

26 (8) (a) Each organization's gaming supplies shall be maintained in a location separate  
27 from another organization's gaming supplies.

- 1 (b) This location shall also be locked and access shall be controlled.
- 2 (c) Unless otherwise directed by the department, an organization's supplies and  
3 equipment remain the property of the organization regardless of where they  
4 are stored and must be accessible to the organization at all reasonable times  
5 upon request.
- 6 (9) Any advertisement of charitable gaming, regardless of the medium used, shall  
7 contain the name of the charitable organization conducting the charitable gaming  
8 and its license number. An advertisement for a bingo session or sessions shall not  
9 advertise a bingo prize in excess of the limitation of ~~ten~~<sup>five</sup> thousand dollars  
10 ~~(\$10,000)~~<sup>(\$5,000)</sup> per ~~day~~<sup>twenty four (24) hour period</sup> set forth in KRS  
11 238.545(1).

12 ➔Section 7. KRS 238.545 is amended to read as follows:

- 13 (1) A licensed charitable organization shall be limited by the following:
- 14 (a) In the conduct of bingo, to one (1) session per day, ~~three (3)~~<sup>two (2)</sup> sessions  
15 per week, for a period not to exceed five (5) consecutive hours in any day and  
16 not to exceed ~~ten (10)~~<sup>fifteen (15)</sup> total hours per week:
- 17 1. No licensed charitable organization shall conduct bingo at more than  
18 one (1) location during the same twenty-four (24) hour period;
  - 19 2. No licensed charitable organization shall award prizes for bingo that  
20 exceed ~~ten~~<sup>five</sup> thousand dollars ~~(\$10,000)~~<sup>(\$5,000)</sup> in fair market  
21 value per ~~day~~<sup>twenty four (24) hour period</sup>, including the value of door  
22 prizes. **A licensed charitable organization may offer items that have**  
23 **been donated to that licensed charitable organization as bingo prizes;**  
24 and
  - 25 3. No person under the age of eighteen (18) shall be permitted to purchase  
26 bingo supplies or play bingo unless he or she is playing for noncash  
27 prizes and is accompanied by a parent or legal guardian and only if the

- 1 value of any noncash prize awarded does not exceed ten dollars (\$10);
- 2 (b) 1. A licensed charitable organization may provide card-minding devices
- 3 for use by players of bingo games.
- 4 2. If a licensed charitable organization offers card-minding devices for use
- 5 by players, the devices shall be capable of being used in conjunction
- 6 with bingo cards or paper sheets at all times.
- 7 3. The department shall have broad authority to define and regulate the use
- 8 of card-minding devices and shall promulgate an administrative
- 9 regulation concerning use and control of them;
- 10 (c) Charity game tickets shall be sold only at the address of the location
- 11 designated on the license to conduct charitable gaming;
- 12 (d) Charity game tickets may be sold, with prior approval of the department:
- 13 1. At any authorized special charity fundraising event conducted by a
- 14 licensed charitable organization at any off-site location; or
- 15 2. By a licensed charitable organization possessing a special limited
- 16 charitable gaming license at any off-site location; and
- 17 (e) An automated charity game ticket dispenser may be utilized by a licensed
- 18 charitable organization, with the prior approval of the department, only at the
- 19 address of the location designated on the license to conduct charitable gaming.
- 20 The department shall promulgate administrative regulations regulating the use
- 21 and control of approved automated charity game ticket dispensers.
- 22 (2) (a) No prize for an individual charity game ticket shall exceed ***one thousand***
- 23 ***four***~~five~~ hundred ninety-nine dollars ***(\$1,499)***~~(\$599)~~ in value, not
- 24 including the value of cumulative or carryover prizes awarded in seal card
- 25 games.
- 26 (b) Cumulative or carryover prizes in seal card games shall not exceed two
- 27 thousand four hundred dollars (\$2,400).

- 1 (c) Information concerning rules of the particular game and prizes that are to be  
2 awarded in excess of fifty dollars (\$50) in each separate package or series of  
3 packages with the same serial number and all rules governing the handling of  
4 cumulative or carryover prizes in seal card games shall be posted prominently  
5 in an area where charity game tickets are sold. A legible poster that lists prizes  
6 to be awarded, and on which prizes actually awarded are posted at the  
7 completion of the sale of each separate package shall satisfy this requirement.
- 8 (d) Any unclaimed money or prize shall return to the charitable organization.
- 9 (e) No paper charity game ticket shall be sold in the Commonwealth of Kentucky  
10 that does not conform to the standards for opacity, randomization, minimum  
11 information, winner protection, color, and cutting established by the  
12 department.
- 13 (f) No electronic pulltab device representation of a charity game ticket shall be  
14 sold in the Commonwealth of Kentucky that does not conform to the  
15 construction standards set forth in an administrative regulation promulgated  
16 by the department. Electronic pulltab devices shall only be used for charitable  
17 gaming.
- 18 (g) No person under the age of eighteen (18) shall be permitted to purchase, or  
19 open in any manner, a charity game ticket.
- 20 (3) (a) Tickets for a raffle shall be sold separately, and each ticket shall constitute a  
21 separate and equal chance to win.
- 22 (b) All raffle tickets shall be sold for the price stated on the ticket, and no person  
23 shall be required to purchase more than one (1) ticket or to pay for anything  
24 other than a ticket to enter a raffle.
- 25 (c) Raffle tickets and tickets for charity fundraising raffle games approved by the  
26 department which are offered exclusively at charity fundraising events and  
27 special limited charity fundraising events are not required to be sold

- 1 separately and may be sold at discounted package rates.
- 2 (d) Raffle tickets shall have a unique identifier on each ticket.
- 3 (e) Winners shall be drawn at random at a date, time, and place announced in  
4 advance or printed on the ticket.
- 5 (f) All prizes for a raffle shall be identified in advance of the drawing and all  
6 prizes identified shall be awarded.
- 7 (4) With respect to charity fundraising events, a licensed charitable organization shall  
8 be limited as follows:
- 9 (a) No licensed charitable organization shall conduct a charity fundraising event  
10 or a special limited charity fundraising event unless they have a license for the  
11 respective event issued by the department;
- 12 (b) No special license shall be required for any wheel game, such as a cake wheel,  
13 that awards only noncash prizes the value of which does not exceed one  
14 hundred dollars (\$100);
- 15 (c) The department may grant approval for a licensed charitable organization to  
16 play bingo games at a charity fundraising event. Cash prizes for bingo games  
17 played during a charity fundraising event may not exceed ~~ten~~<sup>five</sup> thousand  
18 dollars ~~(\$10,000)~~<sup>(\$5,000)</sup> for the entire event. No person under the age of  
19 eighteen (18) shall be permitted to play bingo at a charity fundraising event  
20 unless accompanied by a parent or legal guardian;
- 21 (d) The department may grant approval for a licensed charitable organization to  
22 play special limited charitable games at a charity fundraising event authorized  
23 under this section. The department shall not grant approval for the playing of  
24 special limited charitable games under the provisions of a charity fundraising  
25 event license unless the proposed event meets the definition of a charity  
26 fundraising event held for community, social, or entertainment purposes apart  
27 from charitable gaming in accordance with KRS 238.505(~~10~~)(~~8~~);

- 1 (e) Except for state, county, city fairs, and special limited charity fundraising  
2 events, a charity fundraising event license issued under this section shall not  
3 exceed seventy-two (72) consecutive hours. A licensed charitable  
4 organization shall not be eligible for more than eight (8) total charity  
5 fundraising event licenses per year, including two (2) special limited charity  
6 fundraising event licenses. No person under eighteen (18) years of age shall  
7 be allowed to play or conduct any special limited charitable game. The  
8 department shall have broad authority to regulate the conduct of special  
9 limited charity fundraising events in accordance with the provisions of KRS  
10 238.547; and
- 11 (f) Charity fundraising events may be held:
- 12 1. On or in the premises of a licensed charitable organization;
  - 13 2. In a licensed charitable gaming facility, subject to restrictions contained  
14 in KRS 238.555(7); or
  - 15 3. At an unlicensed facility which shall be subject to the requirements  
16 stipulated in KRS 238.555(3), and subject to the restrictions contained in  
17 KRS 238.547(2).
- 18 (5) Presentation of false, fraudulent, or altered identification by a minor shall be an  
19 affirmative defense in any disciplinary action or prosecution that may result from a  
20 violation of age restrictions contained in this section, if the appearance and  
21 character of the minor were such that his or her age could not be reasonably  
22 ascertained by other means.