WEST VIRGINIA CODE CHAPTER 47 ARTICLE 20

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§47-20-1. Legislative intent.

The Legislature, in recognition of the recreational enjoyment the people of West Virginia receive from playing bingo and of the need charitable and public service organizations have for a practicable way of raising funds, declares its intent to grant the privilege of holding bingo games to those organizations which qualify for a license as provided below.

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§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more paper or virtual cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game. Bingo, as authorized by this article, may be operated and played virtually over the Internet using an online bingo software system or web application.

(b) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.

(c) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Assisting them to establish themselves in life as contributing members of society through education or religion;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office;

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities.

(d) "Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether

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incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code.

(e) "Commissioner" means the State Tax Commissioner.

(f) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the contrary, "concession" includes beverages which are regulated by, and are subject to, the provisions of chapter 60 of this code: *Provided*, That in no case may the sale or the consumption of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted: *Provided however*, That the sale or the consumption of alcoholic beverages or nonintoxicating beer may be permitted in an area where bingo is conducted on the premises of a fraternal society or veteran’s organization that is:

(1) A fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended;

(2) A domestic fraternal society that is exempt from federal income tax under section 501(c)(10) of the Internal Revenue Code of 1986, as amended;

(3) A veterans’ organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code of 1986, as amended; or

(4) A volunteer fire department, as defined in §11-13JJ-2 of this code.

(g) "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners, and awarding prizes.

(h) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-20-15 of this code.

(i) "Gross proceeds" means all moneys collected or received from the conduct of bingo at all bingo occasions held by a licensee during a license period; this term does not include any moneys collected or received from the sale of concessions at bingo occasions.

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(j) "Joint bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees.

(k) "Licensee" means any organization or association granted an annual, limited occasion, or state fair bingo license pursuant to the provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a licensee during a license period after payment of expenses authorized by §47-20-10, §47-20-13, §47-20-15, and §47-20-22 of this code; this term does not include moneys collected or received from the sale of concessions at bingo occasions.

(m) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as defined in subdivision (d) of this subsection, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in paragraphs (1) through (7), inclusive, subdivision (c) of this subsection. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(p) "Venue" means the location in which bingo occasions are held.

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§47-20-3. Who may hold bingo games; application for license; licenses not transferable.

Any charitable or public service organization which has been in existence in this state two years prior to filing an application for a bingo license issued pursuant to section four or five of this article may hold bingo occasions in accordance with the provisions of this article during the time it holds a valid license.

Application for a bingo license shall be made to the Tax Commissioner and shall be on a form which shall be supplied by him or her. The application shall contain the information required by section seven of this article and any other information which the commissioner considers necessary. An application shall be filed not less than sixty days before the date when the applicant intends to hold its first bingo occasion. No bingo occasion may be held until an application filed in accordance with this article has been approved by the Tax Commissioner, and the bingo license has been received: Provided, That under no circumstances may a licensee organization conduct a bingo occasion before the sixty day filing period between the filing of the application and date of the first bingo occasion has elapsed: Provided, however, That the date the application is received by the Tax Commissioner shall begin the sixty day filing period. The Tax Commissioner shall send the applicant its license within five days after approval of the bingo application. If the filing period has elapsed, and the application has not been denied by the Tax Commissioner, and the license has not been received by the applicant, the applicant may consider the application approved and begin to hold bingo occasions. The Tax Commissioner shall send a bingo license to the applicant within five days after the expiration of the filing period if the application has not been otherwise denied.

No bingo license issued pursuant to this article may be transferred.

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§47-20-4. Annual license; conditions on holding of games.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance and entitles only the licensee to hold no more than two bingo occasions per week. No two or more organizations may hold a joint bingo occasion under any annual licenses. No bingo occasion held pursuant to an annual license may exceed six hours duration.

A licensee shall display its annual bingo license conspicuously at the location where the bingo occasion is held.

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual: Provided further, That nothing contained herein may be construed to prohibit junior volunteer firefighters sixteen years of age or older from assisting the volunteer fire company of which such junior firefighter is a member in the conduct of an event under this article where such junior firefighter is supervised by a senior member of the same volunteer fire company who is over the age of twenty-one years.

Any licensee may receive and cash personal checks in an amount not to exceed $100 during the normal operation of a bingo game.

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§47-20-5. Limited occasion license; conditions on holding of games.

A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold a bingo occasion once every twenty-four hours for a time period not to exceed two weeks. Two or more organizations may hold a joint bingo occasion provided each participating organization has been granted a limited occasion bingo license for such jointly held occasion. No bingo occasion held pursuant to a limited occasion license may exceed twelve hours in duration. Each charitable or public service organization which desires to hold bingo occasions pursuant to this section, or any of its auxiliaries or other organizations otherwise affiliated with it, shall obtain a limited occasion license notwithstanding the fact that it holds a valid annual license: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.

Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section, the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.

A licensee shall display its limited occasion license conspicuously at the location where the bingo occasion is held.

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual.

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§47-20-5a. Venue.

Any charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it possessing an annual or limited occasion bingo license or a super bingo license shall conduct a bingo occasion only in the county within which the organization is principally located.

Any licensee which, in good faith, finds itself unable to comply with this requirement shall apply to the Tax Commissioner for permission to conduct a bingo occasion in a location other than the county within which the organization is principally located: Provided, That the location shall be in a contiguous county, or, if not in a contiguous county, and not in the county where the licensee organization has its principal location, the location of the proposed bingo occasion may be no more than thirty air miles from the county within which the organization is principally located. The application shall be made on a form provided by the Tax Commissioner and shall include the particulars of the requested change and the reasons for the change. The application shall be filed no later than sixty days before any scheduled bingo occasion.

For purposes of this section, the principal location of a licensee is the address of the licensee shown on the licensee's West Virginia business registration certificate.

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§47-20-6. License fee and exemption from taxes.

(a) A license fee shall be paid to the Tax Commissioner for annual licenses in the amount of $500, except that for volunteer or nonprofit groups who gross less than $20,000 the fee shall be $200 and for bona fide senior citizen organizations the fee is $50. A license fee shall be paid to the Tax Commissioner for a limited occasion license in the amount of $100. A license fee of $500 shall be paid to the Tax Commissioner for a state fair license as provided in section twenty-two of this article. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee.

(b) The gross proceeds derived from the conduct of a bingo occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemption provided in this subsection does not apply to state fair bingo proceeds.

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§47-20-6a. Super bingo license.

Any charitable or public service organization may, upon payment of a $5,000 license fee, apply to the Tax Commissioner for issuance of an annual super bingo license. All revenue from the license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in that section. The Tax Commissioner shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code specifying those organizations which qualify as charitable or public service organizations.

A holder of a super bingo license may conduct one super bingo occasion each month during the period of the license at which up to $50,000 in prizes may be awarded, notwithstanding the $10,000 limitation on prizes specified in section ten of this article.

A charitable or public service organization that has a regular or limited occasion bingo license may apply for a super bingo license.

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§47-20-7. Information required in application.

An application for a bingo license shall include the following information:

(a) Name of the applicant and name and headquarter's address of any state or national organization of which it is a local branch or lodge;

(b) The address and telephone number of the applicant organization, if any. If the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of such organization shall be supplied;

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted;

(d) The address or location of the premises where licensed bingo games are to be held;

(e) Information as may be required by the commissioner to satisfy him that the applicant meets the requirements of:

(1) Being a charitable or public service organization as required by this article; and

(2) Being in existence in this state two years prior to filing an application for a bingo license.

(f) The day or days of the week, and the time or times when the bingo occasions will be held;

(g) The name of the owner of the premises where the bingo occasions are to be held and a copy of all rental agreements involved if leased or subleased by the applicant from the owner or lessee;

(h) A statement as to whether the applicant has ever had a previous application for any bingo license refused, or whether any previous license has been revoked or suspended;

(i) A statement of the charitable or public service purpose or purposes for which the bingo proceeds will be expended;

(j) A statement or statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

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(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct any part of the bingo games or concessions operated in conjunction therewith;

(2) That it is required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and, in addition, that a violation may result in suspension or revocation of its license and denial of applications for subsequent licenses;

(k) A sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his knowledge;

(l) A list and description of estimated expenses to be incurred in connection with the holding of the bingo occasions and any concessions operated and the name and address of each payee. If a concession is operated in accordance with the provisions of section thirteen of this article, a copy of any written agreement or an explanation of any oral agreement providing for any type of remuneration to be received by the concession operator shall be attached to the application;

(m) A list of the names and addresses of all officers and members of the board of directors, Governors or trustees, if any, of the applicant organizations; and

(n) Any other necessary and reasonable information which the commissioner may require.

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§47-20-8. Amendment of license.

If circumstances beyond the control of the licensee organization prohibit it from holding any bingo occasion in accordance with the information provided by it in its license application form, the licensee organization may request approval by the commissioner to:

(a) Modify the holding of one or more bingo occasions held pursuant to an annual license if the changes are temporary; or

(b) Modify the holding of one or more bingo occasions held pursuant to a limited occasion license if the changes affect fewer than one-third the occasions to be held under the license; or

(c) Amend its original license if the changes to the holding of occasions pursuant to an annual license are permanent or if the changes affect one third or more of the occasions to be held under a limited occasion license.

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§47-20-9. Licensee rules and regulations.

Each licensee may adopt rules and regulations, not inconsistent with or in violation of the provisions of this article, or rules or regulations promulgated hereunder, to govern the conduct of bingo occasions, except that no licensee may allow an individual not present to play any bingo games.

Any rules and regulations adopted by the licensee shall be made available for inspection at all bingo occasions held. Any such rules and regulations adopted are a part of the records required to be kept by section sixteen of this article.

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§47-20-10. Limits on prizes awarded -- General provisions.

Except as otherwise provided in section twenty-two of this article, during the period of a license the average total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license, may not exceed $10,000 in value.

Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.

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§47-20-11. Operator of bingo games and related concessions.

(a) Except as provided in sections thirteen and twenty-two of this article, the only persons, as defined in section two of this article, that may participate in any manner in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion are either:

(1) Residents of this state and who are active members of the licensee organization or its authorized auxiliary organization and who have been active members in good standing of the licensee organization or its authorized auxiliary for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license; or

(2) Employees of the licensee organization or its authorized auxiliary organization who are:

(A) Residents of this state;

(B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the bingo operation is conducted; or

(C) Residents of a bordering state who reside within thirty-five miles of the county in which the bingo operation is conducted.

(b) Notwithstanding anything contained in this article to the contrary, no individual under the age of eighteen years may directly or indirectly participate in the conduct of a bingo game, except for junior firefighters, in accordance with the provisions of this article.

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§47-20-12. Compensation.

Except as provided otherwise in sections twelve-a, thirteen and twenty-two of this article, no individual who participates in any manner in the conduct of a bingo occasion or the operation of a concession in conjunction with a bingo occasion may receive or accept any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation or remuneration whether directly or indirectly, regardless of the source, for his work, labor or services.

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§47-20-12a. Compensation of bingo operator; number of employees.

(a) Within the guidelines set forth in subsections (b), (c) and (d) of this section, a licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is not more than one hundred and twenty percent of the state minimum wage to operators of bingo games who are either:

(1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license; or

(2) Employees of the licensee organization or its authorized auxiliary organization who are:

(A) Residents of this state;

(B) Residents of a state bordering this state if the county of his or her residence is contiguous to the county in this state in which the bingo operation is conducted; or

(C) Residents of a bordering state who reside within thirty-five miles of the county in which the bingo operation is conducted.

(b) If the licensee's gross receipts from bingo occasions equal or exceed $100,000 for the licensee's most recently filed annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee's gross receipts from bingo occasions are less than $100,000, but equal or exceed $50,000 for the licensee's most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee's gross receipts from bingo occasions are less than $50,000 for the licensee's most recently filed annual financial report, a salary may be paid to not more than three operators.

(e) If the licensee also possesses a super bingo license, it may pay a salary to not more than fifteen operators during the super bingo occasion.

(f) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable bingo operator employees allowed under this limitation for bingo licensees is in addition to the number of charitable raffle operator employees allowed under section fifteen, article twenty-one of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations and the charitable bingo fund and the charitable raffle fund and payments from the funds may not be commingled.

(g) For purposes of the limitations set forth in this section, the term "operator" or "bingo

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operator" or "raffle operator" does not include concession stand workers. Wages paid to concession workers may not exceed more than one hundred and twenty percent of the state minimum wage.

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§47-20-13. Concessions exception.

A licensee may allow any individual, firm, partnership or corporation to operate concessions in conjunction with bingo occasions, and to be compensated for the operation, only if the individual, firm, partnership or corporation agrees to donate all net proceeds received from the sale of the concessions and all compensation received from the licensee organization to charitable or public service purposes as specified under section two, subsection (c) of this article.

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§47-20-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 51.

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§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

(1) Rent paid for the use of the premises: *Provided*, That a copy of the rental agreement was filed with the bingo license application and any changes to the rental agreement were filed within 10 days of being made: Provided, however, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion;

(4) The cost to the licensee organization for advertising the bingo occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: *Provided*, That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned on the proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction or acquisition of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) The Tax Commissioner has the authority to disapprove any contract for sale of goods or

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services to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, or any lease of real or tangible personal property to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Contracts or leases which are disapproved shall be considered to be in contravention of this article, and are void. Any attempt by any charitable bingo licensee to engage in transactions under the terms of any lease or contract that has been disapproved is grounds for revocation or suspension of the charitable bingo license and for refusal by the Tax Commissioner to renew the charitable bingo license.

(f) If a property owner or lessee, including his or her agent, has entered into a rental contract to hold super bingo occasions on his or her premises, the premises shall be rented, for super bingo occasions, to not more than four super bingo licensees during any period of four consecutive calendar weeks: *Provided*, That each of the charitable or public service organizations desiring to hold a super bingo occasion must possess its own super bingo license. Subject to this limitation, the premises may be used for super bingo occasions during two consecutive days during a conventional weekend. For purposes of this subsection, the term "conventional weekend" means Saturday and Sunday: *Provided, however*, That the super bingo occasions may occur at the same facility no more often than alternating weekends during a calendar month.

(g) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than 60 days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are expended.

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§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate checking account and separate bookkeeping procedure for its bingo operations: Provided, That nothing in this article restricts a licensee from transferring moneys in the account from a bingo occasion to an account created under section sixteen, article twenty-one of this chapter in an amount not to exceed the actual loss of the raffle occasion receiving the transfer: Provided, however, That money transferred shall be withdrawn only by checks having preprinted consecutive numbers and made payable to the account created under section sixteen, article twenty-one of this code. Money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person, firm or corporation and at no time shall a check be made payable to cash. A licensee shall maintain all records required by this article for at least three years and the records shall be open to the commissioner for reasonable inspection. Whenever the Tax Commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records: Provided further, That the Tax Commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of $175,000. The Tax Commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds bingo occasions.

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§47-20-17. Advertising.

A licensee may advertise its bingo occasions in a manner reasonably necessary to promote the occasion: Provided, That a licensee may not hire any person, as defined in section two of this article, to develop or conduct an advertising campaign to promote any bingo occasion.

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§47-20-18. Fraud; penalties.

In addition to any other offense set forth in this code, any person who or licensee which knowingly conducts or participates in a fraudulently or deceptively conducted bingo game with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred nor more than $10,000, or imprisoned in the penitentiary not less than one, nor more than five years, or both fined and imprisoned.

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§47-20-19. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any individual, association, organization or corporation which knowingly obtains or assists another in obtaining a bingo license under false, deceptive or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than $10,000.

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§47-20-20. Violation of provisions; penalties.

Any person who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than $1,000. Any individual who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon a second or subsequent conviction thereof, shall be fined not less than one hundred nor more than $1,000 or imprisoned not more than one year or both fined and imprisoned.

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§47-20-21. Proceeds of state fair.

The Legislature declares that the net proceeds of any bingo game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in section two of this article. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct bingo occasions at the state fair are deemed to be expenses incurred by the state fair board.

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§47-20-22. State fair bingo license; rules and regulations.

The West Virginia state fair board may apply annually to the Tax Commissioner for a state fair bingo license to provide for the conduct of bingo occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct bingo occasions at the state fair who have conducted bingo occasions on a regular basis for a least two years prior to the date of the state fair board's application. A license fee of $500 shall be paid to the Tax Commissioner for the state fair bingo license. The provisions of sections ten, eleven, twelve, fourteen, fifteen and twenty-eight of this article do not apply to a state fair bingo license. No state fair bingo license may be issued unless the application includes a copy of any lease or agreement entered into between the state fair board and the persons who are to conduct bingo occasions at the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this article, to govern the holding of bingo occasions at the state fair.

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§47-20-23. Administration; Rules and Regulations.

(a) The Tax Commissioner shall administer the provisions of this article in accordance with the provisions of this article and chapter twenty- nine-a of this code.

(b) The commissioner shall deny an application for a license if he finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may revoke, suspend or refuse to renew a license if the licensee or any member of a licensee organization has been convicted pursuant to section eighteen or nineteen of this article and the commissioner finds that it would be in the public interest to do so; or if the licensee has violated any of the provisions of this article: Provided, That before revoking or suspending a license issued under the authority of this article, the commissioner shall give at least ten days, three days for a limited occasion or state fair license, notice to the licensee. Notice shall be in writing, shall state the reason for revocation or suspension and shall inform the licensee of its right to petition the Office of Tax Appeals for a hearing at which the licensee may show cause why the license should not be revoked or suspended. Notice shall be sent by certified mail to the address of the licensee or served by certified mail or by personal or substituted service on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, produce evidence in its behalf and be represented by counsel. A decision of the Office of Tax Appeals upholding, in whole or in part, the revoking or suspending of a license is subject to judicial review as provided in section nineteen, article ten-a, chapter eleven of this code.

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that said failure will substantially impair the commissioner’s ability to administer the provisions of this article with regard to said licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article.

(f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial, revocation, suspension of or refusal to renew a license hereunder.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a bingo license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending a bingo license in the following manner:

(1) An emergency order may be issued only when the commissioner believes that:

(a) There has been a criminal violation of this article;

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(b) Such action is necessary to prevent a criminal violation of this article; or

(c) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

(2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

(3) The emergency order is effective immediately upon issuance and service upon the licensee.

(4) Within five days after issuance of an emergency order, the licensee may petition the Office of Tax Appeals to set a time and place for a hearing wherein the licensee may appear and show cause why its license should not be revoked.

WV Legislature

§47-20-24. Filing of reports.

Each licensee holding an annual license shall file with the Tax Commissioner a quarterly and an annual financial report summarizing its bingo operations for the time period covered by the report. Each quarterly report shall be filed within twenty days after the end of the quarter which it covers. The annual report shall be filed within thirty days after the expiration of the license under which the operations covered by the report were held. The time period covered by the annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

Each licensee holding a limited occasion license or state fair license shall file with the Tax Commissioner a financial report summarizing its bingo operations for the license period within thirty days after the expiration of the license under which the operations covered by the report are held. The report shall contain the name, address and social security number of any individual who receives, during the course of a bingo occasion, prizes, the aggregate value of which exceeds $100, and other information required by the commissioner: Provided, That any licensee failing to file the report when due is liable for a penalty of $25 for each month or fraction of a month during which the failure continues, the penalty not to exceed $100: Provided, however, That annual financial reports must contain either a compilation or review of the financial report by a certified or licensed public accountant, or may be audited by a certified or licensed public accountant, if a licensee's gross receipts exceed $50,000.

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§47-20-25. Filing of copy of license; application open to public inspection.

Whenever a license is granted pursuant to this article, the commissioner shall cause a copy of the license to be filed and recorded with the clerk of the county commission of the county in which the bingo occasions are to be held. A copy of the application shall be made available for public inspection in the office of the commissioner.

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§47-20-26. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: *Provided*, That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least 10 percent of the persons qualified to vote within said county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF BINGO GAMES FOR CHARITABLE PURPOSES IN ..... COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in ..... County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at concurrent with the next primary or general election upon the following question: Shall the provisions of Article Twenty, Chapter Forty-Seven of the Code of West Virginia, 1931, as amended, continue in effect in ..... County, West Virginia?

Name Address Date

.....

(Each person signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for such publication is the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each person qualified to vote in the county at any primary, general, or special election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general, or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary or general election, it shall be held in connection with and as a part of that primary or general election. The ballots in the local option election shall be counted and returns made by the

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election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in ..... County of West Virginia?

/ / Yes / / No

(Place a cross mark in the square opposite your choice.)"

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of §47-20-1 *et seq*. of this code, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, sooner than five years after the last local option election.

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§47-20-27. Prohibited acts by convicted individuals and corporations.

Any individual, organization, association or corporation convicted of any felony, or a misdemeanor for a gambling offense, is prohibited from directly or indirectly obtaining a bingo license, conducting a bingo game, operating a concession, or leasing or providing to a licensee organization any premises where bingo occasions may be held within ten years from said conviction.

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§47-20-28. Restrictions on use of bingo equipment.

A licensee may use only bingo equipment which it owns or which it borrows without compensation, or leases for a reasonable and customary amount, from another licensee.

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§47-20-28a. Certain operators of bingo games to provide for smoking and nonsmoking sections.

Any bingo operator who distributes more than one hundred bingo cards or bingo sheets at any bingo occasion shall provide a smoking and nonsmoking section, if smoking is permitted.

WV Legislature

§47-20-29. Effective date.

The effective date of this article is August 15, 1981.

WV Legislature

§47-20-30. Severability.

If, for any reason, any section, sentence, clause, phrase or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every article, section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

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§47-20-31. Additional remedies for the commissioner; administrative procedures; deposit of money penalties.

(a) Additional remedies. — Notwithstanding any provision of this article to the contrary, the commissioner may:

(1) Revoke or refuse to renew any license issued under this article for any material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article;

(2) Suspend the license of any licensee for the period of time the commissioner deems appropriate, not to be less than one week nor more than twelve months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated for this article;

(3) Place a licensee on probation for not less than six months nor more than five years: Provided, That in the event a licensee is placed on probation, as a condition of the probation, the licensee shall pay to the commissioner a probation supervision fee in an amount equal to two percent of the gross proceeds derived by the licensee from the conduct of bingo occasions during the period of the suspension, but, in no event, may the probation supervision fee be less than $2,000. All probation supervision fee revenue shall be placed in a special account and used by the commissioner, after appropriation by the Legislature, to offset the expenses and costs incurred by the Tax Division to supervise the licensee;

(4) Require a licensee to replace any officer who knew or should have known of a material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article;

(5) Require a licensee to prohibit one or more members, supporters, volunteers or employees of the licensee involved in acts of material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article, from all future bingo occasions held under the license, or for the period of time specified by the commissioner;

(6) Impose a civil money penalty in an amount not less than $100 nor more than two times the annual gross proceeds derived by the licensee, for each material violation of the provisions of this article or legislative rules of the commissioner: Provided, That in setting any monetary penalty for a first offense, the commissioner shall take into consideration the ability of the licensee to continue to exist and operate. For each material violation which is a second or subsequent offense, the amount of the civil penalty that may be imposed may not be less than $500 and may not exceed two times the annual gross proceeds of the licensee. Application of this subdivision and the amount of civil money penalty levied shall be determined in accordance with a legislative rule promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code. The commissioner may file this rule as an emergency rule. Any licensee aggrieved by the amount of the civil penalty may surrender its

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license, or, after exhausting all administrative remedies, have the matter reviewed in the circuit court of the county where the offense giving rise to the civil penalty occurred; or

(7) Order any one or more, or any combination, of the penalties provided for in subdivisions (1) through (6) of this subsection: Provided, That no sanctions or other remedy shall be imposed under this article on a licensee which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, due to failure to operate bingo occasions with members if the occasions are or were operated by residents of this state who have been employed by the licensee or been meaningfully associated with the licensee for one or more years before the date of the licensee's application for a license under this article, or its last application for renewal of a license under this article.

(b) Administrative procedures.

(1) An order issued under this section shall be served by certified mail or in the manner provided in rule 4(d) of the West Virginia rules of civil procedure for trial courts of record, as amended.

(2) A licensee may appeal an order of the commissioner issued under this section by petitioning the Office of Tax Appeals within twenty days after the licensee is served with a copy of the order.

(3) When a petition is filed timely, the provisions of article ten-a, chapter eleven of this code shall apply.

(4) The burden of proof in any administrative or court proceeding is on the licensee to show cause why the order of the commissioner under this section should be modified, in whole or in part, or set aside.

(c) Deposit of money penalties. — All fines, money penalties and fees imposed pursuant to this section, except the probation supervision fee imposed by subdivision (3), subsection (a) of this section, shall be deposited into the General Revenue Fund of this state.

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