WEST VIRGINIA CODE CHAPTER 47 ARTICLE 21

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§47-21-1. Legislative intent.

The Legislature, in recognition 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 raffles to those organizations which qualify as provided in this article.

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§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

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

(1) Contributing to educational or religious purposes;

(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 supporting or participating in the campaign of any candidate for public office;

(5) 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;

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

(8) Providing or supporting any political party executive committee.

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

(c) “Commissioner” means the State Tax Commissioner.

(d) “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.

(e) “Conduct” means to direct the actual holding of a raffle by activities including, but not

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limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21-15 of this code.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be determined to include any moneys collected or received from the sale of concessions at raffle occasions.

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

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by §47-21-11, §47-21-13, and §47-21-15 of this code; this term shall not be determined to include moneys collected or received from the sale of concessions at raffle occasions.

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

(l) "Patron" means any individual who attends a raffle 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 participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as defined in subdivision (p) 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 (a) of this subsection. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper or virtual tickets, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes: *Provided*, That any mechanical or electronic raffle ticket system of whatever design or function is prohibited except as provided in paragraph (2) of this subdivision. This subdivision shall not be interpreted to prevent the use of:

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(1) Hand-cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia;

(2) Mechanical or electronic ticket dispenser systems that produce paper tickets with randomly generated indicia that cannot be redeemed electronically, cannot be used for any other purpose than a one-time raffle, and are limited as follows:

(A) No more than three electronic ticket dispensing units in facilities with a capacity of fewer than 3,000 people; or

(B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10 dispensing units;

(3) A cash register for handling proceeds of sales and other ordinary cash-handling and record-keeping functions of a raffle licensee;

(4) Accounting and record-keeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications; or

(5) An online raffle software system, web application, method, or process for the purpose of conducting online raffles over the Internet.

(o) “Raffle occasion” or “occasion” means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) “Tax-exempt association or organization” means an association or organization which 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 of 1986, as amended; or is exempt from income taxes under subsection 527(a) of that code.

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§47-21-3. Authorizing the conduct of certain raffles without a license.

Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization which has been in existence in this state for at least one year is hereby authorized to conduct raffles without compliance with the licensing provisions of this article: Provided, That any prize awarded in any single raffle at a raffle occasion may not exceed in value the sum of $4,000: Provided, however, That the cumulative gross proceeds derived from the conduct of raffle occasions by any such charitable or public service organization shall not exceed $15,000 during any calendar year: Provided further, That any such organization shall not be subject to the record keeping provisions of section sixteen of this article but shall maintain a separate accounting for the operation of raffles. All records required by this section shall be maintained for at least three calendar years and shall be available for reasonable inspection by the commissioner.

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§47-21-4. Who may hold raffles; application for license; licenses not transferable.

(a) Except as provided in section three of this article, only persons, as defined in section two of this article, who are residents of this state and who are active members of any charitable or public service organization which has been in existence in this state for at least two years prior to filing an application for a raffle license issued pursuant to section five or six of this article may hold raffle occasions in accordance with the provisions of this article during the time it holds a valid license.

(b) Application for a raffle license shall be made to the Tax Commissioner and shall be on a form supplied by him or her. The application shall contain the information required by section eight of this article and any other information which the commissioner considers necessary. No raffle may be held and no tickets may be sold pursuant to this article until the raffle application has been approved by the Tax Commissioner and the license has been received by the applicant: Provided, That no raffle occasion may be held and no raffle tickets may be sold until a sixty day filing period, which is that time period between the receipt of that application by the Tax Commissioner and the first raffle occasion, has expired: Provided, however, That the Tax Commissioner shall send the applicant its license within five days after the application is approved. If the sixty day filing period has expired and the application has not been denied and the raffle license has not been received by the applicant, the applicant may consider the application approved and begin to sell tickets for the raffle or hold the raffle occasion. The Tax Commissioner shall send the applicant its license within five days after the expiration of the filing period if the application has not been otherwise denied.

(c) For purposes of this article, any application for an annual license or a limited occasion license received prior to the effective date of this article is considered filed on the effective date.

(d) No raffle license issued pursuant to this article may be transferred.

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§47-21-5. Annual license; conditions on holding of raffles.

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. No organizations may hold a joint raffle occasion under any annual licenses.

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

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§47-21-6. Limited occasion license; conditions on holding of raffles.

Two or more organizations may hold a joint raffle occasion provided each participating organization has been granted a limited occasion raffle license for such jointly held occasion: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.

A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold two raffle occasions during the time period so specified which may not exceed six months from the date of issuance of such limited occasion license.

Subject to the limitations set forth in this section for charitable or public service organization having an annual license, a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, may be granted only three limited occasion licenses per year in the aggregate. 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 raffle occasion is held.

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§47-21-7. 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. A license fee shall be paid to the Tax Commissioner for a limited occasion license in the amount of $50. 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 on any raffle or raffle occasion.

(b) The gross proceeds derived from the conduct of a raffle occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. Any charitable or public service organization conducting a raffle occasion pursuant to the provisions of this article is exempt from payment of consumers sales and service taxes, use taxes and all other taxes on all purchases for use or consumption in the conduct of a raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of raffle tickets.

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§47-21-8. Information required in application.

An application for a raffle 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 the applicant is a local branch or lodge;

(b) The address and telephone number of the applicant organization, if any, and 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 raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; and the names and addresses of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; 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 raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; 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 when the winning numbers and names are drawn, announced posted and verified and the prizes are awarded;

(d) The address or location of the premises where licensed raffles 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 defined by this article; and

(2) Being in existence in this state for at least one year prior to filing an application for a raffle license.

(f) Designate the date or dates and the time or times when the raffle occasions will be held;

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

(h) State whether the applicant has ever had a previous application for any raffle license refused, or whether any previous raffle license has been revoked or suspended;

(i) State the charitable or public service purpose or purposes for which the raffle proceeds

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will be expended;

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

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct the raffle 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, that a violation of such provisions may result in suspension or revocation of the raffle license and denial of applications for subsequent raffle licenses;

(k) Provide 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) Provide a list and description of estimated expenses to be incurred in connection with the holding of the raffle 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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§47-21-9. Amendment of license.

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

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§47-21-10. 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 raffle occasions.

Any rules and regulations adopted by the licensee shall be made available for inspection at all raffle 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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§47-21-11. Limits on prizes awarded -- General provisions.

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

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§47-21-12. Compensation.

(a) 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 charitable raffle 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 raffle 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 raffle operation is conducted; or

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

(b) If the licensee's gross receipts from raffle 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 charitable raffle 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 charitable raffle occasions are less than $50,000 for the licensee's most recently filed annual financial report, a salary may be paid to no more than three operators.

(e) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operator employees allowed under this limitation for charitable raffle licensees is in addition to the number of charitable bingo operator employees allowed under section twelve-a, article twenty 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.

(f) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" do 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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§47-21-13. Compensation for concession operator; concession operated by charitable or public service organization.

A licensee may allow any person to operate concessions in conjunction with raffle occasions, and to be compensated for such operation, in accordance with the following provisions:

(a) The licensee organization is one which meets or holds functions other than raffle occasions on a regular basis;

(b) The concession to be operated at the raffle occasion is operated regularly at such meetings or functions;

(c) The person which operates the concession at such regular meetings or functions is the same which operates the concession at the raffle occasion; and

(d) The terms of the agreement under which the person operates the concession at the raffle occasion are the same terms under which the concession is operated at the regular meetings or functions: Provided, That a copy of such agreement is filed at the time the application is made and any changes thereto are filed within ten days of being made.

In addition, any charitable or public service organization as defined by section two of this article may operate a concession at any raffle occasions held by a licensee: Provided, That the net proceeds it receives from that concession are used solely for the charitable or public service purposes of that organization.

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§47-21-14.

Repealed.

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

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§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of raffle 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 the raffle, 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 raffle license application with any modifications to the rental agreement to be 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 raffle occasion;

(4) The cost to the licensee organization for advertising the raffle 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 eleven of this article, may be paid out of the gross proceeds of the conduct of raffle.

(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 raffle occasion. The licensee shall expend all net raffle proceeds and any interest earned on the net raffle proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the raffle 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 raffle 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 raffle operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or improvement, 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.

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(e) The Tax Commissioner has the authority to disapprove any contract for sale of goods or services to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, or any lease of real or tangible personal property to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any charitable raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the charitable raffle license and for refusal by the Tax Commissioner to renew the charitable raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of the subsections (a) through (e) of this section 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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§47-21-16. Records; commissioner audit.

Any licensee which holds a raffle occasion as provided by this article shall maintain a separate account and separate book-keeping procedure for its raffle operations: Provided, That nothing in this article restricts a licensee from transferring moneys in the account from a raffle occasion to an account created under section sixteen, article twenty of this chapter in an amount not to exceed the actual loss of the bingo 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 of this code. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he may perform or cause to be performed an audit of the licensee's books and records.

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§47-21-17. Advertising.

A licensee may advertise its raffle occasions in a manner reasonably necessary to promote the occasion.

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§47-21-18. 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 raffle with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than $500 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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§47-21-19. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any person who or licensee which knowingly obtains or assists another in obtaining a raffle 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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§47-21-20. Violation of provisions; crime; civil penalties; additional grounds for suspension or revocation.

(a) Any person who knowingly violates any provisions of this article, other than the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than $100 nor more than $100,000 or confined in jail not more than one year, or both fined and confined.

(b) On and after July 1, 2010, any person licensed under this article, or any person who operates a raffle without a license under §47-21-3 of this code, who is in possession of any electronic or mechanical raffle ticket system of whatever design or function, other than those machines and apparatus allowed under §47-21-2(n) of this code, that is used or designed to be used as part of a licensed raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than $50,000 nor more than $100,000, for each electronic or mechanical raffle ticket system of whatever design or function, other than those machines and apparatus allowed under §47-21-2(n) of this code, in the person's actual or constructive possession in this state. For a person other than an individual, upon conviction, the fine may not be less than $100,000 nor more than $500,000 for each video electronic or mechanical raffle ticket system of whatever design or function in the person's actual or constructive possession in this state.

(c) A licensee may also have his or her license suspended or revoked for failure to comply with this article and may be required to forfeit the machines or devices to the Tax Commissioner for destruction.

(d) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is subject to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed $10,000.

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§47-21-21. Administration; rules and regulations.

(a) The commissioner shall promulgate rules and regulations to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code.

(b) The commissioner shall deny an application for a license or modification thereof 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 license, notice to the licensee. Notice shall be in writing, state the reason for revocation or suspension and 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. The notice required by this section shall be by personal or substituted service, in accordance with the West Virginia rules of civil procedure for trial courts of record, on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, present 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 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 such 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 raffle 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 raffle license under the following circumstances and in the following manner:

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

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

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

(iii) 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.

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§47-21-22. Filing of reports.

Each licensee holding an annual, limited or state fair license shall file with the commissioner a financial report summarizing its raffle operations within thirty days after the expiration date of the license. The time period covered by an 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.

The reports required by this section shall contain the name, address and social security number of any individual who received during the course of a raffle occasion prizes the aggregate value of which exceeded $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 such 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.

WV Legislature

§47-21-23. 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 raffle occasions are to be held. A copy of the application shall be made available for public inspection in the office of the commissioner.

WV Legislature

§47-21-24. 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 such county.

A petition for a local option election shall be in the form specified in this section and shall be signed by qualified voters residing within such county equal to at least 10 percent of the individuals qualified to vote within such 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 RAFFLES FOR CHARITABLE PURPOSES IN _____ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is an individual 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 the next primary or general election: Shall the provisions of article twenty-one, chapter forty-seven of the Code of West Virginia, 1931, as amended, continue in effect in _____ County, West Virginia?

Name Address Date

_____ _____ _____

(Each individual 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 shall be the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each individual 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 election officers and the results certified by the commissioners of election to such

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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.

WV Legislature

§47-21-25. Prohibited acts by convicted persons.

Any person convicted of any felony, or a misdemeanor for a gambling offense, or of a violation of any provision of article twenty of this chapter, is prohibited from directly or indirectly obtaining a raffle license, conducting a raffle game, operating a concession, or leasing or providing to a licensee any premises where raffle occasions may be held, within ten years from said conviction.

WV Legislature

§47-21-26. Restrictions on use of raffle equipment.

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

WV Legislature

§47-21-27. Proceeds of state fair.

The Legislature declares that the net proceeds of any raffle 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 raffle occasions at the state fair are deemed to be expenses incurred by the state fair board.

WV Legislature

§47-21-28. State fair raffle license; rules and regulations.

The West Virginia state fair board may apply annually to the Tax Commissioner for a state fair raffle license to provide for the conduct of raffle occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct raffle occasions at the state fair who have conducted raffle occasions on a regular basis for a least one year 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 raffle license. The provisions of sections eleven, twelve, fourteen, fifteen and twenty-six of this article do not apply to a state fair raffle license. No state fair raffle 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 raffle 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 raffle occasions at the state fair.

WV Legislature

§47-21-29. 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 section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

WV Legislature

§47-21-30. 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 raffle 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 raffle 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 raffle 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.

WV Legislature