WEST VIRGINIA CODE CHAPTER 47 ARTICLE 21A

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§47-21A-1. Legislative intent.

The Legislature, in recognition of the need for charitable and public service organizations, and institutions of higher education, to have a practicable way of raising funds by means of the internet, declares its intent to grant the privilege of holding online raffles to those organizations as provided in this article.

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§47-21A-2. Definitions.

For purposes of this article, unless specified otherwise:

"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;

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

(9) Fostering national, collegiate, or international amateur sports competition.

"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.

"Commissioner" means the State Tax Commissioner.

"Conduct" means to direct the actual holding of an online raffle by activities including, but not limited to, selling tickets, collecting money, drawing or arranging for the drawing of the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

"Expend net proceeds for charitable or public service purposes" means to devote the net

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proceeds of an online raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21A-13 of this code.

"Gross proceeds" means all moneys collected or received from the conduct of an online raffle held by a licensee during a license period.

“Institution of higher education” has the same meaning as contained in §21A-1A-21 of this code: *Provided*, That for purposes of this article an institution of higher education must have an athletic department that is governed by the National Collegiate Athletic Association (NCAA) and are designated by the NCAA as having a Division I or Division II athletics department.

“Institution of higher education’s athletics department activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by providing broad financial support to an institution of higher education’s athletics department including all affiliated and associated nonprofit corporations or other entities, trusts, or Name Image Likeness (NIL) collectives.

"Licensee" means any institution of higher education, or charitable or public service organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

"Net proceeds" means all moneys collected or received from the conduct of an online raffle or online raffles at occasions held by a licensee during a license period after payment of the online raffle expenses authorized by §47-21A-11, §47-21A-12, and §47-21A-13 of this code.

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

"Patron" means any individual who participates in an online raffle by purchasing an online raffle ticket other than an individual who is participating in the conduct of the online raffle.

"Platform provider" means any third-party entity that contracts by written agreement with a licensee to host, conduct, or otherwise administer an online raffle by using a software system, web application, method, or other process for the purpose of conducting online raffles over the Internet.

"Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, incorporated or unincorporated association or organization which is organized exclusively for charitable or public services activities or endeavors.

"Online Raffle" has the same meaning as "raffle" as defined in §47-21-2 of this code but conducted using a software system, web application, method, or other process for the purpose of conducting online raffles over the Internet.

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"Online raffle occasion" or "occasion" means a single online session at which a series of one or more successive online raffles is conducted by a single licensee.

"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.

“Virtually Present” means live, real-time availability by online or other electronic means and includes, but is not limited to, audio or video appearance or by an instant, live chat or messaging program.

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

Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization, or institution of higher education, which has been in existence in this state for at least one year may conduct online raffles without compliance with the licensing provisions of this article: *Provided*, That any prize awarded in any single online raffle in an online raffle occasion may not exceed in $4,000 value: *Provided, however*, That the cumulative gross proceeds derived from the conduct of online raffle occasions by the charitable or public service organization, or institution of higher education, may not exceed $15,000 during any calendar year: *Provided further*, That the charitable or public service, or institution of higher education, is not subject to the record keeping provisions of §47-21A-14 of the code but shall maintain a separate accounting for the operation of online 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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§47-21A-4. Who may hold online raffles; application for license; licenses not transferable.

(a) Except as provided in §47-21A-3 of this code, only persons who are residents of this state and who are active members of any charitable or public service organization, or is employed, or contracted, by an athletic department of an institution of higher education, which has been in existence in this state for at least two years prior to filing an application for an online raffle license issued pursuant to §47-21A-5 and §47-21A-6 of the code may hold online raffle occasions in accordance with the provisions of this article and only during the time it holds a valid license.

(b) A charitable or public service organization, or an institution of higher education, may apply for an online raffle license to the Tax Commissioner and the application shall be on a form supplied by him or her. The application shall contain the information required by §47-21A-8 of the code and any other information which the commissioner considers necessary. An online raffle may not be held and online raffle tickets may not be sold pursuant to this article until the online raffle application has been approved by the Tax Commissioner and the license has been received by the applicant: *Provided*, That an online raffle occasion may not be held and online raffle tickets may not be sold until a 60-day filing period, which is that time period between the receipt of that application by the Tax Commissioner and the first online 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 60-day filing period has expired and the application has not been denied and the online raffle license has not been received by the applicant, the applicant may consider the application approved and begin to sell tickets for the online raffle or hold the online 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) An online raffle license issued pursuant to this article may not be transferred.

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§47-21A-5. Annual license; online raffle occasion not considered a sports wagering activity; online raffle occasion not considered an interactive wagering activity; conditions on holding of online raffles.

(a) A charitable or public service organization, or institution of higher education, or any of its auxiliaries, affiliated nonprofit corporations or other entities, trusts, collectives, 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, or institution of higher education, and all of its auxiliaries, affiliated nonprofit corporations or other entities, trusts, collectives, 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 propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, to 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. Charitable or public service organizations, or institution of higher education, may not hold a joint online raffle occasion under any annual licenses.

(b) Any online raffle occasion, conducted by a licensee which holds an annual license and is an institution of higher education, shall not be considered as a sports wagering activity as contemplated in §29-22D-1 *et seq*. of this code.

(c) Any online raffle occasion, conducted by a licensee which holds an annual license and is an institution of higher education, shall not be considered as an interactive wagering activity as contemplated in §29-22E-1 *et seq*. of this code.

(d) The Tax Commissioner shall provide on his or her website a list of every active and approved licensee to conduct an online raffle occasion. A licensee shall provide a conspicuous hyperlink on any online raffle ticket that is purchased by a patron to the Tax Commissioner’s website. A licensee shall conspicuously display at its physical location, that was provided on its application, the approved license to conduct an online raffle.

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

(a) Two or more charitable or public service organizations, or institutions of higher education, may hold a joint online raffle occasion provided each participating organization has been granted a limited occasion online raffle license for the jointly held occasion: *Provided*, That a licensee which holds an annual license may not obtain more than one limited occasion license.

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

(c) Subject to the limitations set forth in this section for charitable or public service organization, or an institution of higher education having an annual license, a charitable or public service organization, or an institution of higher education and all of its auxiliaries or other associations or organizations otherwise affiliated with it, including but not limited to any affiliated nonprofit corporations or other entities, trusts, collectives, 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 rulemaking 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.

(d) The Tax Commissioner shall provide a hyperlink on its website that will display a list of every active and approved licensee to conduct an online raffle occasion. A licensee shall provide this hyperlink on any online raffle ticket that is purchased by a patron. A licensee shall conspicuously display at its physical location, that was provided on its application, the approved license to conduct an online raffle.

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§47-21A-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 the license fees shall be deposited in the special revenue account established under the authority of §11-9-2a of this code and used to support the investigatory activities provided for in that section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and a county or municipality or other political subdivision of this state may not impose a license or franchise tax or fee on any online raffle or online raffle occasion.

(b) The gross proceeds derived from the conduct of an online 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, or institution of higher education conducting an online 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 an online raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of online raffle tickets.

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

An application for an online raffle license shall include the following information:

(a) The name of the applicant and the 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, or institution of higher education, if any, and if the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of the 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 online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded: *Provided*, That an application submitted by an institution of higher education shall contain the names and addresses of two or more employees of the institution of higher education, or two or more persons contracted by the institution of higher education who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; and the names and addresses of the highest elected officer of the licensee, if any, and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when 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 online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded: *Provided*, That an application submitted by an institution of higher education shall contain the names and addresses of three or more employees of the institution of higher education, or three or more persons contracted by the institution of higher education who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; and the names and addresses and telephone numbers of the highest elected officer of the licensee, if any, and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers and names are drawn, announced, posted, and verified and present when the prizes are awarded;

(e) The address and the location of any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed

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online raffles over the Internet. A copy of all written agreements between the licensee and the platform provider providing these services shall specifically provide a statement of all costs and fees to be incurred by the licensee for receiving these services by the platform provider. A copy of any written agreements shall be provided to the Tax Commissioner;

(f) Information required by the commissioner to satisfy him or her that the applicant meets the requirements of:

(1) Being a charitable or public service organization, or an institution of higher education as defined by this article; and

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

(g) Designate the date or dates and the time or times when the online raffle occasions will be held: *Provided*, That in addition to these initial disclosures of online raffle occasions an institution of higher education shall provide to the commissioner a written list of online raffle occasions that will occur each month, included in this list shall be a designation of the date or dates and the time or times when the raffle occasions will be held;

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

(i) State the charitable or public service, or institution of higher education's athletics department's purpose, purposes, activity or endeavor for which the online raffle proceeds 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 online raffle;

(2) That they are 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 the provisions may result in suspension or revocation of the online raffle license or other raffle license and denial of applications for subsequent online raffle licenses or 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 or her knowledge;

(l) Provide a list and description of estimated expenses to be incurred in connection with the holding of the online raffle occasions and the name and address of each payee;

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(m) A list of the names and addresses of all officers and members of the board of directors, governors or trustees, and any employees of an institution of higher education's athletics department directly involved with online raffle occasions, if any, of an applicant; and

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

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§47-21A-9. Amendment of license.

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

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§47-21A-10. Licensee rules and regulations.

(a) Each licensee may adopt rules and regulations, not inconsistent with or in violation of the provisions of this article, or rules promulgated to govern the conduct of online raffle occasions.

(b) Any rules and regulations adopted by the licensee shall be made available for inspection at all raffle occasions held by way of advertising these rules and regulations on its website and by being posted conspicuously at their place of operation that was provided on its application for a license. Any adopted rules and regulations are a part of the records required to be kept by §47-21A-14 of this code.

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§47-21A-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 §60-1-5 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 online raffle or at the time of purchase.

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§47-21A-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 120 percent of the state minimum wage to operators of charitable online raffles 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 an online 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.

(b) If the licensee's gross receipts from online 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 online 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 online 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.

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§47-21A-13. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of online 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 online raffle, including, but not limited to:

(1) Rent paid for the use of any premises: *Provided*, That a copy of the rental agreement was filed with the online 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 to the licensee organization for equipment and supplies used to conduct the online raffle occasion;

(3) The cost to the licensee organization for advertising the online raffle occasion;

(4) The costs involved in the licensee using technology, Internet service providers, servers, or other necessary infrastructure by which to advertise and conduct the online raffle or online raffle occasion;

(5) The costs relating to any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in §47-21A-11 of the code, may be paid out of the gross proceeds of the conduct of an online raffle.

(c) The licensee shall expend all net online raffle proceeds and any interest earned on the net online raffle proceeds for the purposes stated in the application of an institution of higher education, or for the purposes stated in the application of a charitable or public service organization, within one year after the expiration of the license under which the online 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 an online raffle license for permission to apply any or all of its net proceeds to directly support a charitable or public service, or an institution of higher education’s athletics department, activity or endeavor which it sponsors.

(d) Gross proceeds from any online raffle occasion may not be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or

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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 subsection (a) of this section.

(e) The Tax Commissioner may disapprove any contract for sale of goods or services to any online raffle licensee for use in or with relation to any online raffle operation or occasion, or any lease of real or tangible personal property to any online raffle licensee for use in or with relation to any online 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 online raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the online raffle license or other charitable raffle license and for refusal by the Tax Commissioner to renew the online raffle license or raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of 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, or institution of higher education 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 or for an institution of higher education's athletics department purpose, the licensee shall file periodic reports with the commissioner as directed until the proceeds are expended.

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§47-21A-14. Records; commissioner audit.

Any licensee which holds an online raffle occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its online raffle operations. 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 or she may perform or cause to be performed an audit of the licensee's books and records.

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§47-21A-15. Advertising.

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

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§47-21A-16. Annual Platform Provider license; conditions on holding of online raffles.

A platform provider may apply for an annual Platform Provider license: *Provided*, That a platform provider that has a principal place of business located within this state shall be registered with the West Virginia Secretary of State and also possess a Business Registration Certificate from the West Virginia State Tax Department: *Provided, however*, That a platform provider that has a principal place of business located outside of this state shall be registered as an appropriate foreign corporation with the West Virginia Secretary of State and also possess a Business Registration Certificate from the West Virginia State Tax Department.

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§47-21A-17. Annual Platform Provider License fee and exemption from taxes.

A license fee shall be paid to the Tax Commissioner for annual Platform Provider licenses in the amount of $500. All revenue from the license fee shall be deposited in the special revenue account established under the authority of §11-9-2a of this code and used to support the investigatory activities provided for in that section.

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§47-21A-18. Information required in application for an Annual Platform Provider License.

An application for an Annual Platform Provider license shall include the following information:

(a) The name of the applicant, the legal name of the entity, the jurisdiction and locale of incorporation, telephone number, e-mail address, and the physical and mailing address of its principal place of business;

(b) A description of methods by which they manage, administer, or oversee a website software system, web application, method, or other process for the purposes of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet;

(c) Provide statements that detail the costs and fee structures for any services that are provided by the platform provider.

(d) State whether the applicant has ever had a previous application for any license relating to the regulation of an online raffle refused, or whether any previous license relating to the regulation of an online raffle has been revoked or suspended;

(e) Provide statements to the effect that the individuals and entities specified in subdivision (a) of this section understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct business related to being a platform provider;

(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 platform provider license and denial of applications for subsequent platform provider licenses;

(f) 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 or her knowledge;

(g) A list of the names and addresses of all officers and members of the board of directors, if any, of the platform provider; and

(h) Any other necessary and reasonable information required by the commissioner.

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§47-21A-19. Records; commissioner audit.

Any licensee which holds an Annual Platform Provider License as provided by this article shall maintain a bookkeeping procedure for all of its activities relating to being a platform provider for any charitable or public service organization conducting online raffles in the state. 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 or she may perform or cause to be performed an audit of the licensee's books and records.

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§47-21A-20. Fraud; penalties.

In addition to any other offense set forth in this code, any person, platform provider, or licensee that knowingly conducts or participates in a fraudulently or deceptively conducted, or administered online 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 a correctional facility not less than one, nor more than five years, or both fined and imprisoned.

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§47-21A-21. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any person, platform provider, or licensee that knowingly obtains or assists another person in obtaining an online raffle license or platform provider license under false, deceptive, or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $10,000.

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§47-21A-22. Violation of provisions; crime; civil penalties.

(a) Any person, entity, or platform provider that knowingly violates any provisions of this article, other than the provisions of §47-21A-20 or §47-21A-21 of this code 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) 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 §47-21A-20 or §47-21A-21 of this code is subject to a civil penalty determined by the Tax Commissioner in an amount not to exceed $10,000.

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§47-21A-23. Administration; rules and regulations.

(a) The commissioner shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq*. of this code, to administer the provisions of this article. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code, to administer the provisions of this article.

(b) The commissioner shall deny an application for any license or modification thereof if he or she 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 any license if the licensee or any member of a licensee organization has been convicted pursuant to §47-21A-20, §47-21A-21, or §47-21A-22 of this code, 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 any license issued under the authority of this article, the commissioner shall give at least 10 days' notice to the licensee. The 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 §11-10A-19 of this code.

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

(e) The provisions of §29A-5-1 *et seq*. of this code apply to the denial, revocation, suspension of, or refusal to renew any license.

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

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

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

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

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

(iii) The 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 where the licensee may appear and show cause why its license should not be revoked.

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§47-21A-24. Filing of reports.

(a) Each licensee holding an annual, limited occasion, or platform provider license shall file with the commissioner a financial report summarizing its online raffle operations within 30 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.

(b) The reports required by this section relating to a platform provider license shall additionally contain the name, address, and telephone number of each charitable organization to which the platform provider provided services. The report shall also list the specific online raffle occasions in which platform provider participated, including the date of each online raffle occasion, any costs and fees associated with these online raffle occasions, and any other information required by the commissioner.

(c) The reports required by this section relating to an annual license or a state fair license shall additionally contain the name, address, and social security number of any individual who received during the course of an online 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 shall 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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§47-21A-25. Filing of copy of license; application open to public inspection.

Whenever any 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 licensee's physical operations exist as provided in its application: *Provided*, That a platform provider license issued to an entity that has a principal place of business outside of the state shall provide a hyperlink on their website which will be directed towards a viewable version of the platform provider license. A copy of any application shall be made available for public inspection in the office of the commissioner.

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§47-21A-26. 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 §47-20-1 *et seq*. of this code, is prohibited from directly or indirectly obtaining an online raffle license, conducting an online raffle occasion, or leasing or providing to a licensee any premises where online raffle occasions may be overseen or held, within 10 years from said conviction.

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§47-21A-27. Proceeds of state fair.

The Legislature declares that the net proceeds of any online raffle game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in §47-21A-2 of this code. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct or oversee online raffle occasions are considered to be expenses incurred by the state fair board.

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

The West Virginia state fair board may apply annually to the Tax Commissioner for a state fair online raffle license to provide for the conduct of online raffle occasions. The license shall permit the state fair board to have one or more persons conduct online raffle occasions who have conducted online raffle occasions on a regular basis for a least one year prior to the date of the state fair board's application. The state fair shall pay a license fee of $500 which shall be paid to the Tax Commissioner for the state fair online raffle license. The provisions of §47-21A-11, §47-21A-12, and §47-21A-13 of the code do not apply to a state fair raffle license. A state fair online raffle license may not be issued unless the application includes a copy of any agreement entered into between the state fair board and the persons or entities who are to conduct online raffle occasions. 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 online raffle occasions.

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§47-21A-29. 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 under this article;

(2) Suspend the license of any licensee for the period of time the commissioner considers appropriate, not to be less than one week nor more than 12 months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated under this article;

(3) Place any licensee on probation for not less than six months nor more than five years: *Provided*, That if 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 online raffle occasions, or a probation supervision fee in an amount equal to two percent of the gross proceeds derived by the licensee from the conduct of providing a platform within the state 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 to offset the expenses and costs incurred by the Tax Division to supervise the licensee;

(4) Require any 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 under this article;

(5) Require any 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 under this article, from all future online 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 any 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. The commissioner may file this rule as an emergency rule. Any licensee aggrieved by the amount of the civil penalty may surrender its license, or, after exhausting all administrative

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remedies, have the matter reviewed in the West Virginia Intermediate Court of Appeals; 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 online 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 20 days after the licensee is served with a copy of the order.

(3) When a petition is filed timely, the provisions of §11-10A-1 *et seq*. of this code 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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