WEST VIRGINIA CODE CHAPTER 47 ARTICLE 23

WV Legislature

§47-23-1. Short title.

This article shall be known as and may be cited as the "Charitable Raffle Boards and Games Act."

WV Legislature

§47-23-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Commissioner" means Tax Commissioner of the State of West Virginia, or his delegate.

(b) "Retail value" means the actual consideration paid to the wholesaler by the retailer for any raffle boards or games.

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

(d) "Retailer" means every person engaged in the business of making retail sales of raffle chances except a charitable or public service organization authorized to conduct raffles pursuant to section three, article twenty-one of this chapter.

(e) "Charitable raffle board" or "charitable raffle game" means: (1) A board or other device that has many folded printed slips to be pulled from the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize; (2) a series of paper cards with perforated break-open tabs, a face value of which is covered or otherwise hidden from view to conceal one or more numbers, letters or symbols, which, on payment of a nominal sum, entitles the player to obtain a chance to a designated prize; or (3) such other similar game which may be defined by the State Tax Commissioner by legislative rule.

(f) "Sale" means the transfer of the ownership of tangible personal property for a consideration.

(g) "Verification" means a unique manufacture identifiable serial number which is required to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form of identification as may be prescribed by the Tax Commissioner upon a showing of undue hardship by the taxpayer: Provided, That such other form of identification shall be prescribed by rule in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(h) "Wholesaler" or "distributor" means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the commissioner, and licensed under the provisions of this article, to distribute said devices to charitable raffle boards or games retailers as defined in this article. It also includes anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this state: Provided, That no license taxes or other fees provided for in this section may be charged to any newspaper or other printing or duplicating operation not regularly engaged in the business of manufacturing, packaging, preparing or repackaging charitable raffle boards or games where the gross sales of such printing or duplicating operation from such activity does not exceed $7,500 per

WV Legislature

calendar year and who is donating such items or services to a nonprofit entity without compensation may not be considered a "wholesaler" or "distributor" under this article.

WV Legislature

§47-23-3. Fees.

Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of $500 shall be paid to the commissioner by each wholesaler or distributor for an annual license. Wholesalers and distributors shall also pay a fee of 20¢ on each dollar of retail value of each charitable raffle board or game sold to a retailer. This fee shall be in addition to any tax imposed pursuant to the provisions of article fifteen, chapter eleven of this code. The fees imposed by this article shall be deposited in accordance with the provisions of section two-a, article nine, chapter eleven of this code.

WV Legislature

§47-23-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.

No municipality or governmental subdivision shall levy any excise or other tax or fee requiring charitable raffle boards or games to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in article twelve, chapter eleven of this code.

WV Legislature

§47-23-5.

Repealed.

Acts, 1993 1st Ex. Sess., Ch. 4.

WV Legislature

§47-23-6.

Repealed.

Acts, 1993 1st Ex. Sess., Ch. 4.

WV Legislature

§47-23-7. Surety bonds required; release of surety; new bond.

The commissioner may require wholesalers and distributors to file continuous surety bond in an amount to be fixed by the commissioner except that the amount shall not be less than $1,000. Upon completion of the filing of a surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all fees prescribed by this article.

Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the Tax Commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek release as herein provided, it shall be the duty of the wholesaler or distributor to supply the commissioner with another bond.

WV Legislature

§47-23-7a. Requirement of wholesalers and distributors to be licensed to do business in state; resident agent requirement.

(a) Any wholesaler or distributor supplying charitable raffle boards or games to retailers in this state shall be registered to do business in this state pursuant to the provisions of article twelve, chapter eleven of this code.

(b) Nonresidents otherwise complying with the provisions of this article may be licensed as wholesalers or distributors of charitable raffle boards or games upon designating to the Tax Commissioner a resident agent upon whom notices, orders or other communications issued pursuant to this article may be served and upon whom process may be served.

WV Legislature

§47-23-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

The retail value fee imposed by section three of this article shall be paid by each licensed wholesaler or distributor to the commissioner on or before April 20, July, October and January for the preceding three calendar months. The measure of the fee on the retail value of charitable raffle boards or games shall be determined by multiplying the total amount of the retail value of all charitable raffle boards and games sold by a wholesaler or distributor to retailers during the said three-month period by twenty percent. Said fee shall be in addition to any tax imposed pursuant to the provisions of article fifteen, chapter eleven of this code. All fees due and owing to the commissioner by reason of this article, if paid after the due dates required by this section, shall be subject to the provisions of article ten, chapter eleven of this code. Each wholesaler or distributor shall provide with each quarterly payment of fees a return covering the business transacted in the previous three calendar months and providing such other information as the commissioner may deem necessary for the ascertainment or assessment of the fee imposed by this article. Such return shall be signed under penalty of perjury on such forms as the Tax Commissioner may prescribe and the wholesaler or distributor shall at the time of filing remit all fees owed or due.

The returns prescribed herein are required, although a fee might not be due or no business transacted for the period covered by the return.

Each person required to file a return under this article shall make and keep such records as shall be prescribed by the commissioner that are necessary to substantiate the returns required by this article, including, but not limited to, invoices, serial numbers or other verification, inventories, receipts, disbursements and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority of the commissioner, each delivery ticket or invoice for each purchase or sale of charitable raffle boards or games must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchaser, the point of delivery, the date, quantity, serial number and price of the product sold and the fee must be set out separately, and such other reasonable information as the commissioner may require. These invoicing requirements also apply to cash sales and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

In addition to the commissioner's powers set forth in section five, article ten, chapter eleven of this code, the commissioner shall have authority to inspect or examine the stock of charitable raffle boards and games kept in and upon the premises of any person where charitable raffle boards and games are placed, stored or sold, and he or she shall have authority to inspect or examine the records, books, papers and any equipment or records of manufacturers, wholesalers and distributors or any other person for the purpose of determining the quantity of charitable raffle boards and games acquired or disbursed to verify the truth and accuracy of any statement or return and to ascertain whether the fee

WV Legislature

imposed by this article has been properly paid.

In addition to the commissioner's powers set forth in section five, article ten, chapter eleven of this code, and as a further means of obtaining the records, books and papers of a manufacturer, wholesaler, distributor or any other person and ascertaining the amount of fees and returns due under this article, the commissioner shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the commissioner to grant access to the books, records or papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of fee and returns due, if any.

WV Legislature

§47-23-9. Penalty for failure to file return when no fee due; other offenses; penalties; seizures of illegal boards and games; disposition.

(a) Penalty for failure to file required return where no fee due. -- In the case of any failure to make or file a return when no fee is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of $25 for each month of such failure or fraction thereof.

(b) It shall be a misdemeanor, punishable pursuant to the terms of this article, if any person:

(1) Makes any false entry upon an invoice required to be made under the provisions of this article or with intent to evade the fee imposed by this article presents any such false entry for the inspection of the commissioner;

(2) Prevents or hinders the commissioner from making a full inspection of any place where charitable raffle boards or games subject to the fee imposed by this state are sold or stored or prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(3) Sells any charitable raffle boards or games in this state on which the applicable fee or tax has not been paid;

(4) Being a retailer in this state, fails to produce on demand by the commissioner invoices and verification of all charitable raffle boards and games purchased or received by him within three years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control; or

(5) Being a retailer in this state, purchases or acquires charitable raffle boards and games from any person other than a wholesaler or distributor licensed under this article.

(c) Any person convicted of violating the provisions of subsection (b) of this section shall be confined in the county jail or regional jail for not more than one year or fined not less than $1,000 nor more than $10,000, or both.

(d) Any person who falsely or fraudulently makes, forges, alters or counterfeits any invoice or serial number prescribed by the provisions of this article, or its related rules and regulations, for the purpose of evading the fee hereby imposed, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than $5,000 nor more than $10,000 or imprisoned in the penitentiary for a term of not less than one year nor more than five years, or both.

(e) Whenever the commissioner, or any of his deputies or employees authorized by him or any peace officer of this state shall discover any charitable raffle boards or games subject to the fee as provided by this article and upon which the fee has not been paid as herein required, such charitable raffle boards and games shall thereupon be deemed to be

WV Legislature

contraband, and the commissioner, or such deputy or employee or any peace officer of this state, is hereby authorized and empowered forthwith to seize and take possession of such charitable raffle boards or games, without a warrant, and such charitable raffle boards and games shall be forfeited to the state, and the commissioner shall retain the forfeited charitable raffle boards and games until they are no longer needed as evidence in any prosecution of the person from whom the raffle boards and games were seized. The commissioner may within a reasonable time thereafter destroy such charitable raffle boards and games or sell said charitable raffle boards or games at public auction to the highest bidder: Provided, That such seizure and destruction or public auction shall not be deemed to relieve any person from fine or imprisonment as provided herein for violation of any provisions of this article. Such destruction may be made in any county the commissioner deems most convenient and economical. 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.

(f) Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

WV Legislature

§47-23-10. Transportation of charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

Every person who shall knowingly transport charitable raffle boards or games upon the public highways, waterways, airways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which shall show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee, or the tax, if any, of the state or foreign country at the point of ultimate destination. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the charitable raffle boards or games so transported, the vehicle or vessel in which the charitable raffle boards or games are being transported and any paraphernalia or devices used in connection with such, are declared to be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the state without a warrant.

Any person who transports charitable raffle boards or games in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $300 nor more than $5,000, or imprisoned in the county jail not more than one year, or both.

Charitable raffle boards and games seized under this section shall be forthwith destroyed in the manner provided hereinafter in this section and such destruction shall not relieve the owner of the destroyed charitable raffle boards and games of any action by the commissioner for violations of this or any other sections of this article.

The commissioner shall immediately, after any seizure made pursuant to this section, institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation by the commissioner: Provided, That any person claiming to be the holder of a security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than such claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel was going to be so used, the court shall waive forfeiture in favor of such claimant and order the vehicle or vessel returned to such claimant.

WV Legislature

§47-23-11. Administration; rulemaking; required verification.

(a) The commissioner shall propose for promulgation, rules to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code: Provided, That the initial promulgation of rules to administer the provisions of this article shall be by emergency rule. Additionally, the commissioner shall promulgate a rule which requires that every charitable raffle board or game shall each bear verification, as defined by section two of this article, printed by a manufacturer on each ticket in a game unless, upon application by the taxpayer showing undue hardship, the Tax Commissioner consents to waive this requirement in favor of some other form of verification.

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

(c) 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 or administrative rule if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(d) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler's or distributor's license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

WV Legislature

§47-23-12. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the applicability of such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

§47-23-13. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code shall apply to the fees imposed by this article with like effect as if said act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

WV Legislature

§47-23-14. Effective date of article.

The provisions of this article enacted in the year 1993 shall be effective on and after July 9, 1993.

WV Legislature