WEST VIRGINIA CODE CHAPTER 47

WV Legislature

§47-1-1. Definitions.

(a) "Commercial business" means any business, which in the course of normal operation, offers or exposes goods or services for sale, for the purpose of financial or monetary gain.

(b) "Commercial location" means a physical location or address where businesses conduct commercial transactions. Each physical address or location constitutes a separate "commercial location".

(c) "Commercial transaction" means the buying or selling of goods or services.

(d) "Weight(s)" and/or "measure(s)" means all weights and measures of every kind, instruments and devices for weighing and measuring and any appliance and accessories associated with any or all such instruments and devices.

(e) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight.

(f) "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this article.

(g) "Primary standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

(h) "Secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.

(i) "Commissioner" means the commissioner of the West Virginia Division of Labor.

(j) "Person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, associations and government entities.

(k) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(l) "Package", whether standard package or random package, means any commodity:

(1) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(2) Whose weight or measure has been determined in advance of wholesale or retail sale.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or measure shall be considered a package (or

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packages).

(m) "Net weight" means the weight of a commodity excluding any materials, substances or items not considered to be part of the commodity. Materials, substances or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(n) "Random weight package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with no fixed pattern of weights.

(o) "Standard package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with identical net contents declarations. For example, one liter bottles of carbonated soda, five pound bags of sugar or 9.4 ounce packages of luncheon meat.

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§47-1-2. State standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the commissioner.

In addition to the state primary standards of weights and measures provided in this article, there shall be supplied by the state at least one complete set of copies of these standards, to be known as secondary standards; and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this article, to be known as working standards. Such weights, measures and apparatus shall be verified by the commissioner, or at his discretion by his deputy or inspectors, upon the initial receipt of such weights, measures and apparatus and at least once in each year thereafter, the secondary standards by direct comparison with the primary standards, the working standards by comparison with the secondary standards. When found accurate upon these tests of secondary and working standards, the standards shall be marked as correct. The secondary standards shall be used in making all comparisons of weights, measures and weighing and measuring devices submitted for test in the office of the commissioner, and the primary standards shall be used only in verifying the primary standards and for scientific purposes.

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§47-1-3. Commissioner of labor to be commissioner of weights and measures; powers and duties; appointment of deputies and inspectors.

The state commissioner of labor is the commissioner of weights and measures. He may appoint such deputies and inspectors as may be required to carry out the provisions and purposes of this article within the limits of such appropriation as may be made by the Legislature for the maintenance of the work of the Division of Labor.

The commissioner shall:

(a) Maintain traceability of the primary standards to the national standards in the possession of the national institute of standards and technology;

(b) Enforce the provisions of this article;

(c) Promulgate rules for the enforcement of this article, which rules shall have the force and effect of law;

(d) Establish labeling requirements, establish requirements for the presentation of cost-per-unit information, establish standards of weight, measure or count and reasonable standards of fill for any packaged commodity, and may establish requirements for open dating information;

(e) Grant any exemptions from the provisions of this article or any rule promulgated pursuant thereto when appropriate to the maintenance of good consumer practices within the state;

(f) Conduct investigations to ensure compliance with this article;

(g) Delegate to appropriate personnel any of these responsibilities for the proper administration of this office;

(h) Test annually the standards of weights and measures used within the state, and approve the same when found to be correct;

(i) Inspect and test weights and measures kept, offered or exposed for sale;

(j) Inspect and test, to ascertain if they are correct, weights and measures commercially used:

(1) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count; or

(2) In computing the basic charge or payment for services rendered on the basis of weight, measure or count;

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(k) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Legislature;

(l) Approve for use, and shall mark, such weights and measures as are found to be correct, and shall reject and mark as rejected such weights and measures as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The commissioner shall condemn and may seize and destroy the weights and measures found to be incorrect that are not capable of being made correct;

(m) Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or rules promulgated pursuant thereto. In carrying out the provisions of this article, the commissioner shall employ recognized sampling procedures, such as are designated in national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods";

(n) Prescribe, by rule, the appropriate term or unit of weight or measure to be used, whenever the commissioner determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numeric count, time or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion;

(o) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met by all weights and measures personnel, whether county, municipal or state. The commissioner may adopt the training standards of the national conference on weights and measures national training program; and

(q) From time to time, randomly inspect and test the quality of motor fuels offered or exposed for sale in the state, to determine compliance with the provisions of this article. He shall also, as budget levels provide, act on complaints from consumers in this state where fuel quality is in question.

When necessary for the enforcement of this article or rules promulgated pursuant thereto, the commissioner is:

(1) Authorized to enter any commercial premises during normal business hours, without formal warrant, for the purpose of enforcement of this article;

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(2) Empowered to issue stop-use, hold and removal orders with respect to any weights and measures commercially used, and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale;

(3) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this article or rules promulgated pursuant thereto;

(4) Empowered to stop any commercial vehicle and, after presentation of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him or her to proceed with the vehicle to some specified place for inspection; and

(5) With respect to the enforcement of this article, the commissioner is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this article.

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§47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

The specifications, tolerances and other technical requirements for commercial, law enforcement, data gathering and other weighing and measuring devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state, except insofar as modified or rejected by legislative rule.

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§47-1-5. Requirements for packaging and labeling.

The uniform packaging and labeling regulation as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to packaging and labeling in the state, except insofar as modified or rejected by legislative rule.

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§47-1-6. Requirements for the method of sale of commodities.

The uniform regulation for the method of sale of commodities as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to the method of sale of commodities in the state, except insofar as modified or rejected by legislative rule.

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§47-1-7. Requirements for unit pricing.

The uniform unit pricing regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to unit pricing in the state, except insofar as modified or rejected by legislative rule.

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§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

(a) The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by The National Conference of Weights and Measures and published in the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual registration fee.

(c) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

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§47-1-9. Requirements for open dating.

The uniform open dating regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to open dating in the state, except insofar as modified or rejected by legislative rule.

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§47-1-10. Requirements for type evaluation.

The uniform regulation for national type evaluation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to type evaluation in the state, except insofar as modified or rejected by legislative rule.

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§47-1-11. Requirements for motor fuel.

The uniform regulation for motor fuel as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to motor fuel quality in the state, except insofar as modified or rejected by legislative rule.

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§47-1-12. Misrepresentation of quantity.

No person may:

(a) Sell, offer or expose for sale less than the quantity represented; nor

(b) Take more than the represented quantity when, as buyer, he furnishes the weight or measure by means of which the quantity is determined; nor

(c) Represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.

WV Legislature

§47-1-13. Misrepresentation of pricing.

No person may misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

WV Legislature

§47-1-14. Method of sale.

Except as otherwise provided by the commissioner or by firmly established trade custom and practice:

(a) Commodities in liquid form shall be sold by liquid measure or by weight; and

(b) Commodities not in liquid form shall be sold by weight, by measure or by count.

The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

WV Legislature

§47-1-15. Sale from bulk.

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel and all other bulk sales specified by rule of the commissioner, shall be accompanied by a delivery ticket containing the following information:

(a) The name and address of the buyer and seller;

(b) The date delivered;

(c) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, for example, when temperature compensated sales are made;

(d) The unit price, unless otherwise agreed upon by both buyer and seller;

(e) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and

(f) The count of individually wrapped packages, if more than one, in the instance of commodities bought from bulk but delivered in packages.

WV Legislature

§47-1-16. Information required on packages.

Except as otherwise provided in this article or by rule promulgated pursuant thereto, any package whether a random package or a standard package, kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

(a) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(b) The quantity of contents in terms of weight, measure or count; and

(c) The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed.

WV Legislature

§47-1-17. Declarations of unit price on random weight packages.

In addition to the declarations required by section fifteen of this article, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

WV Legislature

§47-1-18. Advertising packages for sale.

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

WV Legislature

§47-1-19. State weights and measures division.

There shall be a state division of weights and measures located for administrative purposes within the Division of Labor. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(a) Assuring that weights and measures in commercial service with the state are suitable for their intended use, properly installed and accurate and are so maintained by their owner or user;

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within the state;

(c) Making available to all users of physical standards or weighing and measuring equipment who are registered under the provisions of section twenty-one of this article, the precision calibration and related metrological certification capabilities of the weights and measures facilities of the division;

(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of the state and those of other states and federal agencies;

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

WV Legislature

§47-1-20. State measurement laboratory.

(a) The commissioner shall operate and maintain a state measurement laboratory certified and approved by the National Institute of Standards and Technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

(b) The commissioner shall promulgate rules, pursuant to §29A-1-1 et seq. of this code to assess fees for weights and measures, laboratory calibration, and testing. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited into an appropriated special revenue account in the State Treasury to be known as the Weights and Measures Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(c) The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the National Institute of Standards and Technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the National Institute of Standards and Technology.

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§47-1-21. Registration of business.

(a) On or before October 1, 1994, every commercial business in the state which, in the course of conducting business, utilizes weights, measures, and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to conduct business subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

(b) A certificate of device registration is valid for 12 months from the date of issue. The certificate of device registration shall be posted within the place of business.

(c) Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least 30 days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

(d) Beginning January 1, 2018, the division shall charge an annual device registration fee, to be established by legislative rule: Provided, That upon the effective date of the amendments to this section adopted in the 2018 Regular Session of the Legislature, the division may not charge an annual device registration fee.

(e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

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§47-1-22. Civil penalties.

(a) No person may:

(1) Use or have in possession for use in commerce any incorrect weight or measure;

(2) Sell or offer for sale for use in commerce any incorrect weight or measure;

(3) Remove any tag, seal, or mark from any weight or measure, without specific authorization from the Weights and Measures Section; or

(4) Violate any provisions of this article or rules promulgated under it, not defined in §47-1-23(a) of this code.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty may not be more than $1,000 for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person's history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund for use by the commissioner for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) A civil penalty may be assessed by the commissioner only after the commissioner has given at least ten days' notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by certified mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by counsel.

(e) Any person aggrieved by a decision of the commissioner has the right to a contested case hearing under §29A-5-1 et seq. of this code.

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§47-1-23. Criminal penalties.

(a) No person shall:

(1) Hinder or obstruct any weights and measures official in the performance of his duties;

(2) Impersonate in any way the commissioner, his assistants, deputies or inspectors;

(3) Use in commerce any weight or measure which has not been inspected and approved by the commissioner of weights and measures of his or her authorized inspectors or deputies; or

(4) Use or have in his or her possession for the purpose of selling or using any device or instrument to be used to or calculated to falsify any weight or measure.

(b) Any person who, by himself or herself or by his or her servant or agent, or as the servant or agent of another person, knowingly violates subsection (a) of this section, is guilty of a misdemeanor, and, upon a first conviction, shall be fined not more than $100, or imprisoned for not more than ninety days, or both fined and imprisoned; and upon a second or subsequent conviction, he or she shall be fined not less than one hundred nor more than $1,000, or imprisoned for not more than six months, or both fined and imprisoned.

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§47-1A-1. Purpose of article.

The purpose of this article is to protect the purchaser of articles of bedding as herein defined against disease and fraud.

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§47-1A-2. Definitions.

As used in this article, unless the contents clearly require otherwise:

"Commissioner" means commissioner of labor.

"Department" means state department of labor.

"Bedding" or "articles of bedding" includes upholstered furniture and filling material (as herein defined) and any mattress, pillow, cushion, quilt, bed pad, comforter, upholstered spring bed, headboard, box springs, davenport or day bed, bedsprings, metal couch, metal bed, metal cot, metal cradle, metal bassinette, which is wholly or partly upholstered and is used or intended for use for sleeping, resting or reclining purposes.

"Upholstered furniture" means any article of household furniture wholly or partly stuffed or filled with soft material which is used or intended for use for sitting, resting or reclining purposes."Upholstered furniture" does not include any seat or cushion which is used in any automobile, truck, bus or airplane.

"Filling material" includes any hair, down, feathers, wool, cotton, kapok, or other soft material used in the manufacture of and for filling articles of bedding or upholstered furniture.

"New" means any material or article which has not been previously used for any purpose, including by-products produced in the manufacture of any fabric and material reclaimed from new fabric: Provided, however, That an article of bedding returned by the purchaser for exchange, alteration, or correction within thirty days after date of delivery after original sale at retail, shall be deemed to be a new article, but if such article is returned later than thirty days after the date of such delivery, such article shall be deemed to be secondhand.

"Secondhand" means any material or article of which prior use has been made, except as otherwise provided in this article.

"Manufacture,""making,""make," or "made" includes altering, repairing, finishing or preparing articles of bedding or upholstered furniture or filling materials for sale, including remaking or renovating when done away from the home of the owner.

"Sale,""sell," or "sold" includes offering or exposing for sale or exchange or lease or consigning or delivery in consignment for sale, exchange or lease or holding in possession with like intent.

"Person" shall include persons, partnerships, corporations and associations.

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§47-1A-3. Sales of new or secondhand bedding prohibited unless tagged; sales of secondhand filling material as new prohibited; presence of secondhand material or bedding as evidence of sale or use.

No person shall sell as new any article of bedding unless it is made from all new material and shall be tagged as hereinafter provided.

No person shall sell, representing it to be new material, any secondhand hair, down, feathers, wool, cotton, kapok or other material used for filling articles of bedding.

No person shall sell any article of bedding made from secondhand material unless it shall be tagged as hereinafter provided.

For the purposes of this article, the presence on the premises of any maker or vendor of any secondhand filling material or article of bedding shall be presumptive evidence of the sale or use.

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§47-1A-4. Bedding and filling material exposed to disease to be sterilized and tagged before sale.

No person shall sell any article of bedding, or any filling material used in the making thereof, which has been used by or about any person having an infectious or contagious disease unless such article or material shall have been sterilized and is tagged as hereinafter provided.

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§47-1A-5. Filling material from any animal or fowl or unsanitary material to be sterilized.

No person shall use any filling material to make any article of bedding for sale that is made from material (a) that comes from any animal or fowl, (b) that contains any bugs, vermin, insects or filth, (c) that is unsanitary, unless such material has been thoroughly sterilized by a process approved by the commissioner.

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§47-1A-6. Secondhand filling material to be sterilized.

No person shall use any filling material to make any article of bedding for sale that is made from material that is secondhand unless such material has been thoroughly sterilized by a process approved by the commissioner.

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§47-1A-7. Registration by sellers of bedding or filling material required.

No person, firm or corporation shall sell or offer for sale any article of bedding or filling material, as defined in this article, in the State of West Virginia, unless the person, firm or corporation is registered and paid the registration fee as defined in section fourteen of this article.

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§47-1A-8. Altering, defacing or removing tag or stamp.

No person other than a purchaser at retail for his own use or benefit, except as herein otherwise provided, shall remove, deface, alter or cause to be removed, defaced or altered, any tag or inspection stamp attached to an article of bedding: Provided, however, That immediately after material used for filling has been removed from its container, the tag and inspection stamp thereon shall be removed and destroyed by the person removing such material.

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§47-1A-9. Counterfeiting stamps or permits.

No person shall have in his possession or shall make, use or sell any counterfeit or colorable imitation of the inspection stamp or permit required by this article. Each counterfeited or imitated stamp or permit made, used, sold, offered for sale, delivered or consigned for sale shall constitute a separate offense.

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§47-1A-10. Sterilization processes; permits; fees.

NOTE: During the 2017 Regular Session of the Legislature, this section was amended by both House Bill 2948 and Senate Bill 419 and there has been no judicial ruling to determine which, if either, amendments prevail. Both versions are provided here.

As amended by House Bill 2948:

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. The commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner.

As amended by Senate Bill 419:

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner.

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§47-1A-11. Statements required on tags to be affixed to bedding.

(1) Every article of bedding made for sale, sold, or offered for sale shall have attached thereto a tag on which is stated the name of the filling material used, that such material used is new or secondhand and, when required to be sterilized, that such material has been sterilized and the number of the sterilization permit. Such tag shall also contain the name and address of the maker or the vendor and the registry number, as hereinafter provided, of the maker.

(2) In the description of the filling material used on any tag attached to an article of bedding, no term or designation intended or likely to mislead shall be used; but where such article contains more than one material, the amount of such materials shall be stated on the tag and there shall be no variance in excess of 10 percent from the amount stated on the tag: Provided, That no variance shall be allowed for filling material which is described as "all", "pure", "100%" or terms of similar import.

(3) A complete secondhand article of bedding which has not been remade or renovated may be sold "as is" without being sterilized, but the original tag shall be removed by the vendor and he or she shall attach a tag stating that the article is secondhand – "contents unknown". This requirement shall not apply to articles sold at public auction, the sale of antique furniture, or to a private sale from the home of the owner direct to the purchaser: Provided, That the exceptions herein stated shall not authorize the sale of an article of bedding that has been exposed to infectious or contagious disease and which, after such exposure, has not been sterilized and approved for use.

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§47-1A-12. Tags to be approved by commissioner; material, color, form and size of tags.

(1) Whenever a tag is required by this article, it shall be approved by the commissioner. Tags shall be made of muslin, linen or other material of like durability and shall be the same color stock throughout. Paper-faced tags shall not be used.

(2) For designating all new material, the tags shall be white; for designating secondhand or renovated material or articles, the tag shall be yellow; for designating articles or materials placed off-sale by the commissioner, as hereinafter provided, the tag shall be blue; and for designating articles or materials exposed to infectious or contagious disease and declared "unclean" by the commissioner, as hereinafter provided, the tag shall be red.

(3) Statements required on tags shall be legibly printed or stamped on one side only, in the English language, and in letters at least one eighth of an inch in height. Tags attached to mattresses or pillows shall be at least six square inches in area. The commissioner may permit smaller tags or he may require larger tags for other articles. On each tag, there shall be a certification that such article complies with the requirements of law, but such tag also may state that the article complies with the law of any other state.

WV Legislature

§47-1A-13. Commissioner's authority to prohibit sales; tagging bedding or material exposed to disease "unclean."

(1) The commissioner shall order off-sale, and may so tag, any article of bedding or material therefor, which is not tagged as hereinbefore required or which is tagged with a tag bearing a misleading term, description, designation or statement and no articles or materials placed off-sale or seized by the commissioner, or any duly authorized employee of the bedding division, shall be sold nor shall the contents thereof be altered, interfered with or removed in whole or in part, nor shall the articles or contents thereof be removed from the premises where placed off-sale or seized until such articles or materials are released by the commissioner. All articles or materials placed off-sale or seized shall be subject to frequent examination by the commissioner or his duly authorized inspector. Such articles or materials must be so placed or stored as to be readily accessible at all times and shall be produced for examination upon demand of the commissioner or any such employee made upon the person or persons in charge of the establishment or premises where such articles or materials are placed off-sale or were seized.

(2) If the commissioner or any duly authorized employee of the bedding division shall find any article of bedding or filling material which has been used by or about any person having an infectious or contagious disease, he shall tag such article of bedding or material with a tag bearing the word "unclean" in conspicuous letters. Such tag shall not be removed except by the commissioner or such duly authorized employee.

WV Legislature

§47-1A-14. Annual registration and permit fees.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding in the State of West Virginia shall be $90, payable on the first day of the fiscal year. Any manufacturer who submits an annual registration fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(b) The annual sterilizer permit fee shall be $90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be $90.

(d) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Bedding and Upholstery Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligation: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

WV Legislature

§47-1A-15. Organization of bedding division; rules and regulations; enforcement of article.

The commissioner of labor shall have the power and duty, to:

(1) Create and organize a division of the department of labor to be known as the "bedding division" for the purpose of administering and enforcing the provisions of this article; (2) appoint, remove and fix the compensation of the employees of the bedding division; (3) prescribe uniform rules pertaining to and not in conflict with the provisions of this article, to carry out the intent and purpose of this article; (4) invoke any legal, equitable or special remedy for the enforcement of orders or the provisions of this chapter; (5) cooperate with other agencies of the State of West Virginia for the purpose of securing laboratory analyses of the filling material used in articles of bedding; (6) exercise any other power necessary for the proper administration of the division of bedding, and the enforcement of the provisions contained in this article.

WV Legislature

§47-1A-16.

Repealed.

Acts, 1963 Reg. Sess., Ch. 89.

WV Legislature

§47-1A-17. Power of inspection and seizure; obstruction of commissioner or employees prohibited.

Every place where articles of bedding are made, remade or renovated, or materials therefor are prepared or sterilized, where such articles or materials are sold, shall be subject to inspection by the commissioner or duly authorized employee of the bedding division who shall have the power to inspect the manufacture and sale or delivery of all articles or materials covered by this article, to open and examine the contents thereof and power to seize and hold for evidence any article of bedding, in whole or in part, which he has reason to believe is made or sold or held in possession in violation of this article. No person shall interfere with, obstruct or otherwise hinder the commissioner or an employee of the bedding division in the performance of his duties.

WV Legislature

§47-1A-18. Penalties for violations.

Any person who violates a provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for a first offense, be fined not less than $50 nor more than $500; for a second or subsequent offense, shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than thirty days, or both, such fine and imprisonment to be within the discretion of the court.

WV Legislature

§47-2-1. Definitions.

As used in this article:

(1) The term “trademark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

(2) The term “service mark” means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(3) The term “mark” includes any trademark or service mark, entitled to registration under this article whether registered or not.

(4) The term “trade name” means any name used by a person to identify a business or vocation of such person.

(5) The term “person” and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law.

(6) The term “applicant” embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors or assigns of that person.

(7) The term “registrant” as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors or assigns of that person.

(8) The term “use” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark is considered to be in use: (A) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and (B) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(9) A mark is considered to be “abandoned” when either of the following occurs:

WV Legislature

(A) When its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute *prima facie* evidence of abandonment.

(B) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(10) The term "secretary" means the Secretary of State or the designee of the secretary charged with the administration of this article.

(11) The term "dilution" means the lessening of the capacity of registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of: (A) Competition between the parties; or (B) likelihood of confusion, mistake or deception.

(12) "Retail value" means:

(A) For items that bear a counterfeit mark and are components of a finished product, the regular selling price of the finished product in which the component would be utilized.

(B) For items that bear a counterfeit mark other than items described in paragraph (A) of this subdivision and for services that are identified by a counterfeit mark, the regular selling price of the item or service.

(13) "Sign" means the action of affixing a person's signature to any document or record, whether by manual, written or approved electronic means.

(14) "Signature" means any mark, symbol, facsimile or electronic mark or symbol, that depicts a person's name on any document or record, affixed to the document or record by the person with the intent to authenticate, assert, certify or agree to the matters, validity, information or attestation set forth in the document or record.

WV Legislature

§47-2-2. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent;

(5) Consists of a mark which, (A) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (B) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (C) is primarily merely a surname: Provided, That nothing in this subdivision shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(6) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

WV Legislature

§47-2-3. Application for registration.

(a) Subject to the limitations set forth in this article, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

(d) The application shall be signed manually in writing or electronically by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by three specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the Secretary of State.

WV Legislature

§47-2-4. Filing of applications.

(a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this article.

(b) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon applicant's agreement, or, the secretary may require that an amended application be filed.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (1) the secretary finally refuses registration of the mark, or (2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration. (g) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section nine of this article.

WV Legislature

§47-2-5. Certificate of registration.

(a) Upon compliance by the applicant with the requirements of this article, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(b) Any certificate of registration issued by the secretary under the provisions hereof or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

WV Legislature

§47-2-6. Duration and renewal.

(a) A registration of mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the secretary, shall accompany the application for renewal of the registration.

(b) A registration may be renewed for successive periods of ten years in like manner.

(c) Any registration in force on the date on which this article becomes effective shall continue in full force and effect for the unexpired term thereof or for a term of five years from the effective date of this section, whichever shall first expire, and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

(d) All applications for renewal under this article, whether of registrations made under this article or of registrations effected under any prior article, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

WV Legislature

§47-2-7. Assignments, changes of name and other instruments.

(a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments which relate to a mark registered or application pending pursuant to this article, such as, by way of example, licenses, security interests or mortgages, may be recorded in the discretion of the secretary, provided that such instrument is in writing and duly executed.

(d) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referred to in subsections (a), (b) or (c) of this section shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

WV Legislature

§47-2-8. Records.

The secretary shall keep for public examination a record of all marks registered or renewed under this article, as well as a record of all documents recorded pursuant to section seven of this article.

WV Legislature

§47-2-9. Cancellation.

The secretary shall cancel from the register, in whole or in part:

(1) Any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(2) All registrations granted under this article and not renewed in accordance with the provisions hereof;

(3) Any registration concerning which a court of competent jurisdiction shall find:

(A) That the registered mark has been abandoned;

(B) That the registrant is not the owner of the mark;

(C) That the registration was granted improperly;

(D) That the registration was obtained fraudulently;

(E) That the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered;

(F) That the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned: Provided, That, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be cancelled for such area of the state; or

(4) When a court of competent jurisdiction orders cancellation of a registration on any ground.

WV Legislature

§47-2-10. Classification.

The secretary shall, by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code, establish a classification of goods and services for convenience of administration of this article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office. Until approved by the Legislature, the secretary may effect the purposes of this section by emergency rule.

WV Legislature

§47-2-11. Fraudulent registration.

Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

WV Legislature

§47-2-12. Infringement.

Subject to the provisions of section sixteen of this article, any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this article in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services; then, such person shall be liable in a civil action by the registrant for any and all of the remedies provided in section fourteen of this article, except that under subdivision (b) of said section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

WV Legislature

§47-2-13. Injury to business reputation; dilution.

(a) The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

(1) The degree of inherent or acquired distinctiveness of the mark in this state;

(2) The duration and extent of use of the mark in connection with the goods and services;

(3) The duration and extent of advertising and publicity of the mark in this state;

(4) The geographical extent of the trading area in which the mark is used;

(5) The channels of trade for the goods or services with which the owner's mark is used;

(6) The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state; and

(7) The nature and extent of use of the same or similar mark by third parties.

(b) The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user wilfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such wilful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

WV Legislature

§47-2-14. Remedies.

(a) Any owner of a mark registered under this article may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times such profits and damages and/or reasonable attorneys' fees of the registrant in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

(b) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

WV Legislature

§47-2-14a. Trademark counterfeiting.

(a) A person commits trademark counterfeiting if the person knowingly and with the intent to sell or distribute and without the consent of the registrant or owner uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit of a mark or any service that is identified by a counterfeit of a mark registered under this chapter, registered under 15 U. S. C. §1052, or under the common law with knowledge that the mark is counterfeit.

(b) For purposes of this section, a mark is counterfeit if:

(1) It is a mark that is identical to or substantially indistinguishable from a registered or common law mark; and

(2) It is used on or in connection with the same type of goods or services for which the genuine mark is registered or otherwise used.

WV Legislature

§47-2-14b. Misdemeanor trademark counterfeiting; penalty.

(a) A person commits the crime of misdemeanor trademark counterfeiting if the person commits trademark counterfeiting as described in section fourteen-a of this article and the total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is less than $1,000.

(b) The penalty for misdemeanor trademark counterfeiting is:

(1) For a first violation, confinement in jail for not more than one year, or a fine not exceeding $2,000, or both a fine and confinement; and

(2) For each subsequent violation, confinement in jail for not more than one year, or a fine not exceeding $5,000, or both a fine and confinement.

(3) If the person convicted under this section is a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law, the maximum fine that may be imposed is $10,000.

WV Legislature

§47-2-14c. Felony trademark counterfeiting; penalty.

(a) A person commits the crime of felony trademark counterfeiting if the person commits trademark counterfeiting as described in section fourteen-a of this article and the total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is $1,000 or greater.

(b) The penalty for felony trademark counterfeiting is:

(1) Confinement in a state correctional facility for no less than one year nor more than five years or a fine not exceeding $10,000, or both a fine and confinement.

(2) If the person convicted under this section is a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law, the maximum fine that may be imposed is $20,000.

WV Legislature

§47-2-14d. Seizure, forfeiture and disposal.

(a) The following are subject to seizure and forfeiture in the same manner as the items referenced in section seven hundred three, article seven, chapter sixty-a of this code:

(1) All raw materials and equipment that are used, or intended for use, in providing, manufacturing and delivering items bearing a counterfeit mark or services identified by a counterfeit mark;

(2) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport items bearing a counterfeit mark, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this article;

(B) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this article; and

(C) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this article;

(3) All books, records, computers and data that are used or intended for use in the production, manufacture, sale or delivery of items bearing a counterfeit mark or services identified by a counterfeit mark; and

(4) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of activity constituting a violation of sections fourteen-b, fourteen-c and fourteen-d of this article.

(b) Items bearing a counterfeit mark are subject to seizure and disposition as provided in section seven, article one-a, chapter sixty-two of this code. However, if the registrant or owner so requests, the agency holding the seized items shall release the seized items to the registrant or owner or make such other disposition as the registrant or owner directs. If the registrant or owner does not direct disposition of the seized items, the agency shall destroy the items.

WV Legislature

§47-2-15. Forum for actions regarding registration; service on out-of-state registrants.

(a) Actions to require cancellation of a mark registered pursuant to this article or in mandamus to compel registration of a mark pursuant to this article shall be brought in the circuit court of Kanawha County. In an action in mandamus, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(b) In any action brought against a nonresident registrant, service may be effected by service upon the registrant in accordance with the provisions of this code and the rules of civil procedure which prescribe the manner in which service upon nonresidents may be obtained.

WV Legislature

§47-2-16. Common law rights.

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

WV Legislature

§47-2-17. Fees.

(a) The secretary shall charge the following fees for services provided pursuant to the provisions of this article:

(1) For an application fee and for a renewal fee, $50; and

(2) For recording any instrument specified in section seven of this article, $25.

(b) One half of each fee shall be deposited in the state fund, general revenue and one half of the fee shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the existing special revenue account entitled "trademarks" as established by chapter two hundred forty-nine, acts of the Legislature, 1996 regular session, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

WV Legislature

§47-2-18. Severability.

If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this article shall not be affected thereby.

WV Legislature

§47-2-19. Time of taking effect -- repeal of prior articles; intent of article.

(a) This article is effective July 1, 1996, but shall not affect any suit, proceeding or appeal then pending.

(b) The intent of this article is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the "Trademark Act Of 1946," as the same has been amended on the effective date of this article. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this article.

WV Legislature

§47-2A-1. Legislative findings.

The Legislature finds and declares that:

(a) Under the copyright laws of the United States, a copyright owner may enforce the rights thereof against the owners of restaurants, bars, retail establishments, entertainment and sports facilities and similar places of business where members of the public may assemble for the public performance of music and other similar copyrighted works, whether it be in person by a performing artist hired by the proprietor or on radio stations or other electronic media transmitted, received and rebroadcast by the proprietor at those places of business;

(b) The rights and responsibilities regarding copyrighted works are set forth in clause eight, section VIII, article I of the Constitution of the United States and governed statutorily by Title 17 of the United States code. The Legislature believes it is important that the State of West Virginia assist its business owners who utilize copyrighted materials and the creative artists of this state and elsewhere by ensuring that the holders of copyrights and those who use such materials are equitably treated.

WV Legislature

§47-2A-2. Definitions.

As used in this article:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work, other that a motion picture or other audiovisual work, recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Public Law 94-553.

(2) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American society of composers, authors and publishers, broadcast music, inc., and SESAC, inc.

(3) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other similar place of business located in this state in which the public may assemble to hear nondramatic musical works or similar copyrighted works be performed, broadcast or otherwise transmitted for the enjoyment of the members of the public there assembled.

(4) "Royalty" or "royalties" means the fees payable to the copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.

WV Legislature

§47-2A-3. Publication of royalty rates; notice requirement; sanctions for failure to publish.

(a) Any copyright owner or performing rights society seeking to charge a proprietor or proprietors a royalty or fee for the performance for the public of nondramatic musical or similar works, shall, at least annually provide notice of the royalty or fee rate and the means of its computation to said proprietor or proprietors.

(b) The notice referred to in subsection (a) of this section shall be satisfied if the copyright owner or performing rights society publishes the required information in a Class II-0 legal advertisement in a qualified newspaper published in this state with a bona fide circulation of forty thousand or more, or if the copyright owner or performing rights society files copies of its license agreements containing the information required under subsection (a) of this section with the Secretary of State's office.

(c) Failure of a copyright owner or performing rights society to meet the publication requirements of this section shall constitute a complete defense to any civil action brought by a copyright owner or performing rights society seeking to recover royalties in circumstances where no contract exists between such parties regarding royalties.

WV Legislature

§47-2A-4. Applicability.

This article does not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission, except that if a copyright owner or performing rights society is licensed by the federal communications commission, this article shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided herein. This article does not apply to any conduct engaged in for the enforcement of section fifty, article three, chapter sixty-one of this code.

WV Legislature

§47-3-1.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-3-2.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-3-3.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-3-4.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-3-5.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-3-6.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-1.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-2.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-3.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-4.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-5.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-6.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-4-7.

Repealed.

Acts, 1996 Reg. Sess., Ch. 249.

WV Legislature

§47-5-1. Definitions.

For the purposes of this article:

(a) "Fabricator" means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm doors, shower doors, bathtub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations.

(b) "Hazardous location" shall mean those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the commissioner of the West Virginia department of labor may determine after notice and hearings as required by chapter twenty- nine-a of this code, and shall specifically include those installations, glazed or unglazed, known as sliding glass doors, frame or unframed glass doors, and adjacent fixed glazed panels which may be mistaken for a means of ingress or egress, storm doors, shower doors, and tub enclosures whether or not the glazing in such doors, panels, or enclosures is transparent.

(c) "Installer" means those persons or concerns who or which install glazing materials or build structures containing glazing materials, in hazardous locations.

(d) "Manufacturer" means a person who manufactures safety glazing material.

(e) "Safety glazing material" means any glazing materials, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of the American National Standards Institute Standard Z-97.1-1966 and such further requirements as may be adopted by the department of labor in compliance with chapter twenty-nine-a of the Code of West Virginia and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with glazing material.

WVLegislature

§47-5-2. Labeling required.

(a) Each light of safety glazing material manufactured, distributed, imported or sold for use in hazardous locations or installed in a hazardous location within this state shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, the thickness and type of safety glazing material, and the fact that the material meets the test requirements of American National Standards Institute Standard Z-97.1-1966 and any further requirements as may be adopted by the department of labor. The label must be legible and visible after installation.

(b) Safety glazing labeling shall not be used on other than safety glazing materials.

WV Legislature

§47-5-3. Safety glazing materials required in hazardous locations.

It shall be unlawful in this state to knowingly sell, fabricate, assemble, glaze, install, consent or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location: Provided, however, That this shall not apply to the replacement of glazing materials in a residence constructed for occupancy of not more than two families, which residence is in existence on July 1, 1971.

WV Legislature

§47-5-4. Nonliability of employees.

No liability under this article is created for workmen who are employees of a contractor, subcontractor or other employer responsible for compliance with this article.

WV Legislature

§47-5-5. Violations; penalties.

Whoever violates any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $500, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

WV Legislature

§47-5-6. Effective date; prior contracts.

This article shall take effect on July 1, 1971. All contracts involving glazing materials entered into prior to the effective date of this article shall not be affected by the provisions of this article even if performance of the contract occurs after the effective date.

WV Legislature

§47-6-1. Money of account.

The money of account of this state shall be the dollar, cent and mill. All accounts by public officers shall be so kept.

WV Legislature

§47-6-2. Writing, account or entry valid although sum expressed in other money.

No writing shall be invalid, nor the force of any account or entry be impaired, because a sum of money is expressed therein otherwise than in such money of account.

WV Legislature

§47-6-3. In suits for foreign or other money, value in money of account to be fixed.

In any suit for a sum of money expressed in any foreign currency, or otherwise than in the money of account of this state, the jury, if there be one impaneled for any other purpose, and if not, the court, shall ascertain the value in such money of account of the sum so expressed, making such allowance for the difference of exchange as shall be just; and the judgment or decree may either be for what may be so ascertained, or for the sum of money expressed as aforesaid to be discharged by the sum so ascertained.

WV Legislature

§47-6-4. Silver coin as legal tender.

The silver coin issued by the government of the United States shall be a legal tender for the payment of all debts heretofore or hereafter contracted by the citizens of this state, and the same shall be received in payment of all debts due to the citizens of this state, and in satisfaction of all taxes levied by the authority of the laws of this state.

WV Legislature

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest; agreements in writing fixing rate of interest for residential real estate purposes; providing there may be no penalty upon prepayment; quarterly reports required.

(a) Except in cases where it is otherwise specially provided by law, legal interest shall continue to be at the rate of $6 upon $100 for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate: Provided, That a charge of $1 may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.

(b) Parties may contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed $8 upon $100 for a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

(c) As an alternative to the interest rate authorized by the provisions of subsections (a) or (b) of this section and any interest rate authorized by any other provision of this code, where a loan of money is made for the purpose of purchasing real estate upon which is situate a single-family or multifamily residential unit or units, or for the construction of a single-family or multifamily residential unit or units upon real estate, or additions or improvements thereto, or for the purpose of the payment of a loan theretofore made for the construction of a single-family or multifamily residential unit or units upon real estate, and any such loan is secured by a first mortgage or first deed of trust upon such real property, after the effective date of this section and until July 1, 1975, the parties may contract in writing for the payment of interest for such loan of money at a rate not to exceed $9 upon $100 for a year and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract, and such maximum rate shall be valid for the term of such contract: Provided, That the parties may contract in writing for the payment of interest for such loan of money at the rate specified in this subsection (c) only if such contract in writing also specifies that there shall be no penalty whatever for prepayment of the loan in whole or in part by cash, a new loan or otherwise, and such contract provision prohibiting any such penalty shall govern and control notwithstanding any other provision of this code to the contrary, whether such other provision was enacted before or after the enactment of this section: Provided, however, That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

(d) For the purpose of subsections (b) and (c) of this section, the term "points" is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

(e) In order for the Legislature to determine whether the period of time during which parties may enter into a contract for the payment of the maximum rate of interest authorized in

WV Legislature

subsection (c) of this section should be extended beyond June 30, 1975, the commissioner of banking shall promulgate rules and regulations requiring all banking institutions, savings and loan associations and other financial institutions making loans in this state of the type specified in said subsection (c) to file with him quarterly reports as to the number and amount of loans of the type specified in said subsection (c) made during the preceding quarter, and such quarterly reports shall contain sufficient detail for the Legislature to ascertain whether the authorization of the maximum interest rate provided in said subsection (c) has resulted in the making of more loans of the type specified in said subsection (c). The first such report shall cover the quarter which began on April 1, 1974.

WV Legislature

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the creditor shall rebate that portion of such charge in the manner set forth in section five-d of this article. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable. Nothing herein contained shall affect or restrict the right of the parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed $8 upon $100 a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

WV Legislature

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

(a) The Legislature hereby finds and declares that:

(1) Changes in permissible interest rates on nonprecomputed loans or forebearances of money require specialized knowledge of the needs for credit for the construction and purchase of adequate housing and of buildings and improvements for the establishment and expansion of businesses and agricultural enterprises and of the availability of such credit at reasonable rates while affording a competitive return to persons extending such credit;

(2) Maximum interest rates on nonprecomputed loans or forebearances of money to be secured by mortgages or deeds of trust on real property should be prescribed from time to time to reflect changed economic conditions, current interest rates throughout the United States and the availability of credit in order to promote the making of such loans or forebearances of money; and

(3) The prescribing of such maximum interest rates can be accomplished effectively and flexibly by the West Virginia commissioner of banking.

(b) In view of the foregoing findings, it is the purpose of this section to authorize the West Virginia commissioner of banking to prescribe from time to time the maximum interest rates on nonprecomputed loans or forebearances of money made pursuant to this section to be secured by mortgages or deeds of trust on real property, subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders to charge up to the maximum interest rates so fixed.

(c) The West Virginia commissioner of banking is hereby authorized and directed to prescribe each month by order a maximum rate of interest for the next succeeding month for any nonprecomputed loan or forebearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, which maximum rate of interest shall not exceed the monthly index of long-term United States government bond yields for the preceding calendar month, plus an additional one and one-half percent per year rounded off to the nearest quarter of one percent per year and such maximum rate shall be valid for the term of the loan contract. For the purpose of this section, the monthly index of long-term United States government bond yields means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over-the-counter market for all outstanding United States treasury bond issues, based on available statistics, which mature in twenty years or more from the date the index is calculated, but shall not include such bonds as are redeemable at par for payment of federal estate taxes. In fixing said maximum rates of interest, the commissioner of banking shall take into consideration prevailing economic conditions including said monthly index of long-term United States government

WV Legislature

bond yields for the preceding calendar month, yields on conventional home and multifamily housing mortgage and deed of trust loans throughout the United States and on corporate interest-bearing securities of high quality, and the availability of credit at reasonable rates which will afford a competitive return to persons extending such credit.

(d) On or before the twentieth day of each month the West Virginia banking commissioner shall ascertain the monthly index of long-term United States government bond yields for the preceding calendar month and shall then prescribe by order in accordance with subsection (c) of this section the maximum rate of interest for the next succeeding month for any nonprecomputed loan or forebearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, and shall cause such maximum rate of interest to be issued to the public, such maximum rate of interest to be effective on the first day of the next succeeding month.

(e) Notwithstanding any other provisions of this section, the commissioner of banking shall on or before the effective date of this section prescribe by order the maximum rate of interest for any nonprecomputed loan or forebearance of money pursuant to this section to be secured by a mortgage or deed of trust upon real property for the month in which this section becomes effective and shall at the earliest possible date prescribe the maximum rate of interest for any such loan or forebearance of money for the next succeeding month, and shall issue such maximum rates of interest to the public; and the state commissioner of banking shall thereafter determine and issue the maximum rate of interest for any such loan or forebearance of money in conformity with the other provisions of this section.

(f) As an alternative to the interest rate authorized by any other provision of this code, where a nonprecomputed loan or forebearance of money is secured by a mortgage or deed of trust upon real property, the parties may, after the effective date of this section, contract in writing for the payment of interest for such loan or forebearance of money at a rate, including points expressed as a percentage of the loan or forebearance divided by the number of years of the loan or forebearance contract, not to exceed the then effective maximum rate prescribed by the state banking commissioner pursuant to the provisions of this section and such rate shall be valid for the term of such contract: Provided, That the points charged shall not exceed one percent of the original bona fide principal amount of the loan or forebearance of money, except that in the case of a construction loan, the points charged shall not exceed two percent of the original bona fide principal amount of the loan: Provided, however, That the parties may contract in writing for the payment of interest for such loan or forebearance of money at the rate specified in this subsection (f) only if such contract in writing also specifies that there shall be no penalty whatever for prepayment of the loan or forebearance of money in whole or in part by cash, a new loan, forebearance of money or otherwise, and such contract provision prohibiting any such penalty shall govern and control notwithstanding any other provision of this code to the contrary, whether such other provision was enacted before or after the enactment of this section: Provided further, That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

WV Legislature

(g) For the purpose of subsection (f) of this section, the term "points" is defined as the amount of money, or other consideration, received by the lender or forebearer from whatever source, as a consideration for making the loan or forebearance of money and not otherwise expressly permitted by statute.

(h) A commitment to make a nonprecomputed loan or forebearance of money pursuant to this section to be secured by a mortgage or deed of trust upon real property which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the mortgage or deed of trust is entered into is less than the commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of the lender or forebearer to make such a loan or forebearance of money within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of the consummation of the loan or forebearance of money even though the maximum rate of interest is then higher.

(i) Nothing contained in this section shall prohibit the parties to any loan transaction or forebearance from contracting for a rate of interest authorized by any other provision of this code.

(j) The commissioner of banking shall promulgate rules and regulations requiring all banking institutions, savings and loan associations and other financial institutions making loans in this state of the type specified in this section to file with him quarterly reports as to the number and amount of such loans made during the preceding quarter, and such quarterly reports shall contain sufficient detail to ascertain whether the provisions of this section have promoted the making of such loans.

WV Legislature

§47-6-5c. Interest on the forebearance of money.

Wherever any law authorizes any person to loan money at a certain rate of interest it shall also be lawful for such person to charge a like rate of interest for the forebearance of money.

WV Legislature

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; liability and penalties for excess charges.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the prepaid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such finance charge attributable to any particular monthly installment period shall be that proportion of charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78"). For prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction: (i) Repayable according to its original terms over a period of thirty-six months or less; (ii) in which unequal or irregular or other than substantially equal consecutive monthly installments are payable, the commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation or rebates consistent with the Rule of 78.

(b) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction, repayable by its original terms over a period of greater than thirty-six months, an amount shall be rebated of not less than the unearned portion of the finance charge calculated by applying the rate of finance charge which was required by applicable law to be disclosed in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment. In instances where no rate of finance charge was required by law or otherwise to be disclosed, the unearned portion of the finance charge shall be calculated by applying the finance charge which was charged in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment.

(c) Unearned prepaid finance charges upon prepayment includes all prepaid finance charges for points, loan or credit origination fees, or loan or credit investigation fees retained by the lender or creditor or its affiliates: Provided, That: (i) In calculating the rebate for a consumer loan or credit sale unsecured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of two percent of the amount financed; and (ii) in calculating the rebate for a consumer loan or credit sale secured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of five percent of the amount financed: Provided, however, That no such deduction totaling more than five percent of the amount financed may be made by the same lender within a twenty-four month period as a result of a refinancing. Upon prepayment in full of a consumer loan or credit sale, any unearned prepaid finance charges may be rebated by using the Rule of 78 where the original

WV Legislature

loan term is thirty-six months or less. Where the original loan term is greater than thirty-six months, any such charges shall be rebated by using the actuarial method. To the extent that this section overrides the preemption on limiting points and other such charges on first lien residential mortgages for nonpurchase money loans contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply: Provided further, That this subsection does not apply to loans made by federally-insured depository institutions.

(d) For purposes of the rebate of unearned finance charges as required by this section, a prepayment in full shall include repayment by a new loan, extension of credit, refinancing, consolidation, forbearance or otherwise. The term "loan or credit investigation fees" does not include the reasonable costs of credit reports paid to third parties as part of the bona fide closing costs in real estate transactions, where such costs are not included as part of the finance charge.

(e) As an alternative to the Rule of 78 method of rebate of determining the unearned finance charge required by this section, a creditor may rebate unearned finance charges under any other method which gives a greater rebate to the debtor than the rebate determined by the Rule of 78.

(f) The provisions governing rebates as set forth in this section shall apply to all transactions entered into on or after September 1, 1996. For transactions entered into prior to September 1, 1996, the provisions in effect prior to the effective date of this section of the respective chapters of this code shall be utilized to determine the rebate of unearned finance charges.

(g) For consumer credit sales or consumer loans subject to the provisions of chapter forty-six-a of this code, the provisions of article five of said chapter, govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum rate allowed under the provisions of this section. In all other instances, the provisions of this article govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum allowed under this section.

WV Legislature

§47-6-6. Usury and usurious contracts; penalties and forfeitures.

All contracts and assurances made directly or indirectly for the loan or forbearance of money or other thing at a greater rate of interest than is permitted by law shall be void as to all interest provided for in any such contract or assurance, and the borrower or debtor may, in addition, recover from the original lender or creditor or other holder not in due course an amount equal to four times all interest agreed to be paid and in any event a minimum of $100. Every usurious contract and assurance shall be presumed to have been wilfully made by the lender or creditor, but a bona fide error, innocently made, which causes such contract or assurance to be usurious shall not constitute a violation of this section if the lender or creditor shall rectify the error within fifteen days after receiving notice thereof.

WV Legislature

§47-6-7. Pleading usury; reply; evidence; issues; trial; judgment.

Any defendant may plead in general terms that the contract or assurance on which the action is brought was for the payment of interest at a greater rate than is allowed by law, to which plea the plaintiff shall reply generally, but may give in evidence upon the issue made up thereon any matter which could be given in evidence under a special replication. Under the plea aforesaid, the defendant may give in evidence any fact showing, or tending to show, that the contract, or assurance, or other writing upon which the action was brought, was for an usurious consideration. Upon such plea the court shall direct a special issue to try and ascertain: (a) Whether or not the contract, assurance or other writing is usurious; (b) if usurious, to what extent; (c) whether or not interest has been paid on such contract, assurance or other writing, above the legal rate, and if so, to what extent; (d) if a verdict be found for the defendant upon the plea of usury, a judgment shall be rendered for the plaintiff for the principal sum due, with interest at the legal rate, and, if any interest has been paid above the legal rate, the excess over and above that rate, shall be entered as a credit on the sum due; but if nothing be found due after applying all credits and all excesses of interest paid above the legal rate, judgment shall be entered for the defendant; and if the total of such credits and interest paid exceed the principal sum due with legal interest thereon, the defendant shall have judgment for the difference. The provisions of this section shall not apply in any case where suit is brought on a contract, assurance or writing, and the defendant undertakes to show that the contract, assurance or writing is for the payment of interest at a rate which is prohibited by the terms of the following article.

WV Legislature

§47-6-8. Remedy in equity; injunction against sale of security.

Any borrower of money or other thing may exhibit a bill in equity against the lender, and compel him to discover upon oath the money or thing really lent, and all bargains, contracts, or shifts relative to such loan, and the interest or consideration of the same; and, if it appear that more than lawful interest was reserved, the lender shall recover his principal money or other thing with six percent interest only, but shall recover no costs. If property has been conveyed to secure the payment of the debt, and a sale thereof is about to be made, or is apprehended, an injunction may be awarded to prevent such sale pending the suit. But nothing in this section shall have the effect of permitting a recovery on any contract which is void under the provisions of the following article.

WV Legislature

§47-6-9. Action or suit to recover back usurious interest.

If an excess beyond the lawful interest be paid in any case for the loan or forbearance of money or other thing, the person paying the same may in a suit or action recover the full amount of such payment from the person with whom the contract was made or to whom the assurance was given; and it may be so recovered from such person notwithstanding the payment of the excess be made to his indorsee or assignee.

WV Legislature

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

No corporation, partnership, limited partnership or limited liability company may interpose the defense of usury in any civil action, nor may any bond, note, debt or contract of a corporation, partnership, limited partnership or limited liability company be set aside, impaired or adjudged invalid by reason of anything contained in the laws prohibiting usury.

WV Legislature

§47-6-11. Certain business debts exempt from usury laws.

No law limiting interest rates or providing for forfeiture, penalty, or other loss or liability because of the rate of interest charged may be applied:

(1) To any debt that is incurred by a loan, installment sale, or other similar transaction, and is incurred primarily for a business purpose; or

(2) To any addition to or refinancing in whole or in part of a debt meeting the requirements of subdivision (1) of this section, providing such addition or refinancing is also primarily for a business purpose: Provided, That if the debt described in subdivision (1) of this section is incurred by a natural person, the provisions of this section shall not apply unless such debt is in a principal amount of $20,000 or more.

For the purpose of determining the applicability of this section, the term "business" means and includes any activity that is engaged in primarily for the purpose of generating "gross income," as that term is defined in section one, article thirteen, chapter eleven of this code: Provided, That "business" does not mean or include farming or any other agricultural activity engaged in by a producer of agricultural commodities, livestock, or other farm products.

WV Legislature

§47-7-1.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-2.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-3.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-4.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-5.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-6.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-7.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-8.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-9.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-10.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-11.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-12.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-13.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-14.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-15.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-16.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-17.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-18.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-19.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-20.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7-21.

Repealed.

Acts, 1933 Reg. Sess., Ch. 13, §26.

WV Legislature

§47-7A-1.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-2.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-3.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-4.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-5.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-6.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-7.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-8.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-9.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-10.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-11.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-12.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-13.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-14.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-15.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-16.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-17.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-18.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-19.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-20.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-21.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-22.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-23.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-24.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-25.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-7A-26.

Repealed.

Acts, 1974 Reg. Sess., Ch. 12.

WV Legislature

§47-8-1.

Repealed.

Acts, 1963 Reg. Sess., Ch. 193.

WV Legislature

§47-8-2. Business not to be conducted under assumed name without filing certificate of true name.

No individual, sole proprietorship or general partnership may carry on, conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals owning, conducting or transacting such business, unless that person or persons shall file with the Secretary of State a form setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons owning, conducting or transacting the same, with the home and post office address or addresses of such person or persons. Such form shall be executed and duly acknowledged by the person or persons so owning, conducting or intending to conduct such business.

WV Legislature

§47-8-3. Indexing of forms filed with Secretary of State.

The Secretary of State shall keep a searchable database of all persons filing forms provided for in this article.

WV Legislature

§47-8-4. Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name.

(a) No business entity organized as a corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association required to register with the Secretary of State in order to conduct business within the state may conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the original certificate establishing the business entity or by an amendment thereto, unless the business entity files in the office of the Secretary of State an application for registration of trade name. The application shall set forth:

(1) The name under which the business entity is organized and registered;

(2) The name under which the business of such business entity is, or is to be, conducted or transacted upon approval of the application, which name must be distinguishable from the name of any other corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association, and from any name reserved or registered for any of those business entities;

(3) The address of the principal office within the state or, if no office is maintained within the state, the address of the principal office in the state in which the business entity is established; and

(4) The name, title and signature of a person having authority to make the application.

The Secretary of State shall grant a certificate of registration to any applicant who has met the requirements of this subsection. A new certificate of registration is to be filed if the business entity desires to conduct or transact any business in this state under any other assumed name not on file in the office of the Secretary of State.

(b) One original executed of the application for trade name registration shall be delivered to the Secretary of State. Delivery may be made by electronic transmission if permitted by the Secretary of State. If the filing officer finds that the application for trade name registration conforms to law, he or she shall, when all fees have been paid as prescribed by law, file it and shall deliver to the entity or its representative a receipt for the record and fee.

(c) Upon discontinuing the use of a registered trade name the certificate of registration of trade name shall be withdrawn by filing a certificate of withdrawal with the office of the Secretary of State setting forth the name to be discontinued, the real name, the address of the party transacting business and the date upon which the original certificate of registration of trade name was filed.

WV Legislature

(d) Any corporation authorized to transact business in this state shall procure an amended certificate of incorporation in the event it changes its corporate name by filing articles of amendment with the office of the Secretary of State as provided in article ten, chapter thirty-one-d, or article ten, chapter thirty-one-e of this code.

(e) Any limited liability company registering a trade name pursuant to the provisions of this section is subject to the limitations set forth in subsections (b), (c) and (d) section one hundred five, article one, chapter thirty-one-b of this code.

WV Legislature

§47-8-5. Penalty for violations.

Any individual, sole proprietorship, general partnership, corporation, limited partnership, limited liability partnership, limited liability company, business trust or voluntary association or other person owning, carrying on, conducting or transacting business as aforesaid who willfully fails to comply with the provisions of section two or four of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100, or imprisoned in the county jail for a term not exceeding thirty days, or both fined and imprisoned.

WV Legislature

§47-8A-1.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-2.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-3.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-4.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-5.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-6.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-7.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-8.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-9.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-10.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-11.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-12.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-13.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-15.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-16.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-17.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-18.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-19.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-20.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-21.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-22.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-23.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-24.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-25.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-26.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-27.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-28.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-29.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-30.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-31.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-32.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-33.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-34.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-35.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-36.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-37.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-38.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-39.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-40.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-41.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-42.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-43.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-44.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-8A-45.

Repealed.

Acts, 1995 Reg. Sess., Ch. 250.

WV Legislature

§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section eight of this article and the certificate as amended;

(2) "Contribution" means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his or her capacity as a partner;

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission;

(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient;

(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

(7) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

(8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(9) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(10) "Partner" means a limited or general partner;

(11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign),

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limited liability company, professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity;

(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it; and

(15) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

WV Legislature

§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership," or the abbreviation "Ltd. Partnership," "LP" or "L.P.";

(2) May not contain the name of a limited partner unless: (i) It is also the name of a general partner or the corporate name of a corporate general partner; or (ii) the business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) May not be the same as, and must be distinguishable from, the name of any corporation, limited partnership, limited liability partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation, limited partnership, limited liability partnership, or limited liability company in this state; and

(4) May not include the words "engineer", "engineers", "engineering" or any combination of those words unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as defined therein.

WV Legislature

§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name along with the fee prescribed by section two, article one, chapter fifty-nine of this code. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for a period of one hundred twenty days. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

WV Legislature

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the Secretary of State such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law, or if no address is available on record with the Secretary of State then to the address provided on the original process or process, if available. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the Secretary of State as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, by a means

WV Legislature

which may include electronic issuance and acceptance of electronic return receipts, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership. After receiving verification from the United States Postal Service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk's office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process or notice shall be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign limited partnership not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein: (a) If such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state; (b) if such limited partnership commits a tort, in whole or in part, in this state; or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein above described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or accepted by, the Secretary of State pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited partnership in this state.

WVLegislature

§47-9-5. Office and records.

(a) Each limited partnership shall continuously maintain in this state an office, which may, but need not be, a place of its business in this state, at which shall be kept the following records:

(1) A current list of the full name and last known business address of each partner, separately identifying the general and the limited partners, set forth in alphabetical order;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;

(3) A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;

(4) A copy of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(C) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(D) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) Such records shall be available for inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

WV Legislature

§47-9-6. Nature of business.

A limited partnership may carry on any business which a partnership without limited partners may carry on, except the business of banking, brokerage or making insurance.

WV Legislature

§47-9-7. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

WV Legislature

§47-9-8. Certificate and formation of limited partnership.

(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The general character of its business;

(3) The mailing address of the principal office and the name and address of the agent for service of process, if any;

(4) The name and the business address of each general partner;

and

(5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

WV Legislature

§47-9-9. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

(1) The name of the limited partnership;

(2) The date of the filing of the certificate; and

(3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new partner;

(2) The withdrawal of a partner; or

(3) The continuation of the business under section forty-four of this article after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the thirty-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

WV Legislature

§47-9-10. Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the general partners filing the certificate determine.

WV Legislature

§47-9-10a. Administrative dissolution of a limited partnership; reinstatement; appeals.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited partnership if the limited partnership does not:

(1) Pay all applicable fees, franchise taxes, or penalties imposed by this chapter or other law within 60 days after the due date;

(2) Deliver its annual or biennial report to the Secretary of State within 60 days after the due date;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is required for the continued operation of the limited partnership;

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited partnership pursuant to this chapter.

(b) If the Secretary of State determines that adequate grounds exist to administratively dissolve a limited partnership, the Secretary of State shall make and file a record of the determination and serve the limited partnership with a notice of the determination along with a copy of the record by certified mail.

(1)(A) The limited partnership must correct each issue described in the dissolution record or take reasonable steps toward correcting each issue within 60 days of service of the record on the limited partnership.

(B) If the limited partnership fails to take adequate steps toward correcting the issue or issues described in the record, the Secretary of State may administratively dissolve the limited partnership by signing the certification of dissolution.

(C) The Secretary of State shall file the original certificate of dissolution and serve a copy of the certificate of dissolution to the limited partnership by certified mail.

(2) A limited partnership that has been administratively dissolved may continue its existence only to the extent necessary to wind up and liquidate its business and affairs.

(3) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

(c) A limited partnership that has been administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The

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application for reinstatement shall:

(1) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(2) Demonstrate that the grounds for dissolution either did not exist or have been eliminated;

(3) Demonstrate that the limited partnership's name satisfies the requirements of §47-9-2 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the limited partnership have been paid.

(d)(1) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is accurate, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.

(2) The Secretary of State shall file the certificate of reinstatement and serve the limited partnership with a copy of the certificate.

(e) When the Secretary of State grants a reinstatement, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

(f) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited partnership with a notice that explains the reason or reasons for denial.

(g) A limited partnership may appeal a denial of reinstatement by filing a petition to set aside the dissolution in the circuit court of Kanawha County within 30 days after the date upon which the limited partnership received notice of the denial of reinstatement. The petition shall include a copy of the Secretary of State's certificate of dissolution, the limited partnership's application for reinstatement and, the Secretary of State's notice of denial. A copy of the petition shall be served on the Secretary of State by certified mail.

(h) If a reinstatement is granted by the court, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

WV Legislature

§47-9-11. Execution of certificates.

(a) Each certificate required by this article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

WV Legislature

§47-9-12. Judicial amendment or cancellation of certificate.

If a person required by section eleven of this article to execute a certificate of amendment or cancellation fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the appropriate circuit court to direct the execution of the certificate. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

WV Legislature

§47-9-13. Filing of certificate.

(a) One signed copy of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the Secretary of State. Delivery may be made by electronic transmission if permitted by the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he or she shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

(b) Upon the filing of a certificate of amendment, or judicial decree of amendment, in the office of the Secretary of State the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the Secretary of State, required by section eight of this article, shall determine the validity of the limited partnership.

WV Legislature

§47-9-14. Liability for false statement in certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section twelve of this article.

WV Legislature

§47-9-15. Notice.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

WV Legislature

§47-9-16. Delivery of certificates to limited partners.

Upon the return by the Secretary of State pursuant to section thirteen of this article of a receipt for the record and the fees the general partners shall promptly deliver or mail a copy of the receipt for the record and the fees to each limited partner unless the partnership agreement provides otherwise.

WV Legislature

§47-9-17. Admission of limited partners.

(a) A person becomes a limited partner on the later of:

(1) The date the original certificate of limited partnership is filed; or

(2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.

(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in section forty- two of this article, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of that power.

WV Legislature

§47-9-18. Voting by limited partners.

Subject to section nineteen of this article, the partnership agreement may grant to all or a specified group of the limited partners the right to vote, on a per capita or other basis, upon any matter.

WV Legislature

§47-9-19. Liability to third parties.

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business: Provided, That if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by doing one or more of the following:

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director or shareholder of a general partner that is a corporation;

(2) Consulting with and advising a general partner with respect to the business of the limited partnership;

(3) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(5) Requesting or attending a meeting of partners;

(6) Proposing, approving or disapproving, by voting or otherwise on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) A change in the nature of the business;

(v) The admission or removal of a general partner;

(vi) The admission or removal of a limited partner;

(vii) A transaction involving an actual or potential conflict of interest between a general

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partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) Winding up the limited partnership pursuant to section forty-six of this article; or

(8) Exercising any right or power permitted to limited partners under this article and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2), section two of this article, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

WV Legislature

§47-9-20. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) of this section, is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

WV Legislature

§47-9-21. Right of limited partner to information.

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by section five of this article;

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns from each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

WV Legislature

§47-9-22. Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admissions of additional general partners, with the written consent of all partners.

WV Legislature

§47-9-23. Events of withdrawal of general partner.

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in section thirty-two of this article;

(2) The general partner ceases to be a member of the limited partnership as provided in section forty of this article;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided for in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person, (i) his death; or (ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of

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dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

WV Legislature

§47-9-24. General powers and liabilities of general partner.

(a) Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this article, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to other partners.

WV Legislature

§47-9-25. Contributions by general partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers and is subject to the restrictions and liabilities of a general partner and, except as provided in the partnership agreement, also has the powers and is subject to the restrictions of a limited partner to the extent of his participation in the partnership as a limited partner.

WV Legislature

§47-9-26. Voting by general partners.

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners on any matter.

WV Legislature

§47-9-27. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

WV Legislature

§47-9-28. Liability for contribution.

(a) No promise by a limited partner to contribute to the limited partnership is enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to the portion of the value, as stated in the partnership records required to be kept by section five of this article of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

WV Legislature

§47-9-29. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

WV Legislature

§47-9-30. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

WV Legislature

§47-9-31. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

WV Legislature

§47-9-32. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him

WV Legislature

§47-9-33. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

WV Legislature

§47-9-34. Distribution upon withdrawal.

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement, and, if not otherwise provided in the agreement, he is entitled to receive within a reasonable time after withdrawal the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

WV Legislature

§47-9-35. Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

WV Legislature

§47-9-36. Right to distribution.

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

WV Legislature

§47-9-37. Limitations on distribution.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

WV Legislature

§47-9-38. Liability upon return of contribution.

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this article, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this article, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the records required to be kept by section five of this article, of his contribution which has not been distributed to him

WV Legislature

§47-9-39. Nature of partnership interest.

A partnership interest is personal property.

WV Legislature

§47-9-40. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

WV Legislature

§47-9-41. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

WV Legislature

§47-9-42. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in section thirty-eight of this article: Provided, That the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under sections fourteen and twenty-eight of this article.

WV Legislature

§47-9-43. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

WV Legislature

§47-9-44. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the happening of events specified in the certificate of limited partnership;

(2) Upon the happening of events specified in writing in the partnership agreement;

(3) The written consent of all partners;

(4) An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;

(5) Entry of a decree of judicial dissolution under section forty-five of this article; or

(6) Signing of a certificate of dissolution by the Secretary of State under section ten-a of this article.

WV Legislature

§47-9-45. Judicial dissolution.

On application by or for a partner, the appropriate circuit court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

WV Legislature

§47-9-46. Winding up of affairs.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs: Provided, That the appropriate circuit court may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

WV Legislature

§47-9-47. Distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section thirty-one or thirty-four of this article;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under said section thirty-one or thirty- four; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

WV Legislature

§47-9-48. Law governing foreign limited partnerships.

Subject to the Constitution of this state, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

WV Legislature

§47-9-49. Registration of foreign limited partnership.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership or if its name is unavailable for use in this state, a limited partnership name that satisfies the requirements of section two of this article, including a copy of the resolution of its partners adopting the fictitious name;

(2) The state and date of its formation;

(3) The name and address of an agent for service of process, if any;

(4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(5) The name and business address of each general partner; and

(6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(b) The foreign limited partnership shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of the partnership records in the state or country under whose law it is organized.

WV Legislature

§47-9-50. Issuance of registration.

If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the Secretary of State, required by section nine of this article, shall determine the validity of the limited partnership.

WV Legislature

§47-9-51. Registration of name of foreign limited partnership.

A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that could be registered by a domestic limited partnership under the provisions of section two of this article.

WV Legislature

§47-9-52. Foreign limited partnership -- Changes and amendments to registration.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

WV Legislature

§47-9-53. Foreign limited partnership -- Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to claims for relief or causes of action arising out of the transaction of business in this state.

WV Legislature

§47-9-53a. Revocation and reinstatement of foreign limited partnership certificates of authority.

(a) The Secretary of State may revoke a certificate of authority of a foreign limited partnership to transact business in this state in the manner set forth in subsection (b) of this section if:

(1) The limited partnership fails to:

(A) Pay all applicable fees, franchise taxes, and penalties owed to the state within 60 days after the due date;

(B) Deliver its annual or biennial report within 60 days of the due date; or

(C) File a statement to change a name or business address of an agent as required by this article; or

(2) The limited partnership has made a misrepresentation of any material fact in any application, report, affidavit, or other record submitted pursuant to this article; or

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is required for the continued operation of the limited partnership; or

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in §21a-2-6 of this code.

(b)(1) The Secretary of State may not revoke a certificate of authority of a foreign limited partnership unless the Secretary of State serves notice to the foreign limited partnership of the Secretary's intent to revoke the foreign limited partnership's certificate of authority at least 60 days prior to the effective date of the revocation, by a notice addressed to the foreign limited partnership's principal office.

(2) The notice must specify the cause for the revocation of the certificate of authority.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the revocation.

(c) A foreign limited partnership that has been administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the foreign limited partnership and the effective date of its administrative revocation;

(2) Demonstrate that the grounds for revocation either did not exist or have been eliminated;

WV Legislature

(3) Demonstrate that the foreign limited partnership's name satisfies the requirements of §47-9-2 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the foreign limited partnership have been paid.

(d) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.

(2) The Secretary of State shall file the certificate of reinstatement and serve the foreign limited partnership with a copy of the certificate.

(e) When the Secretary of State grants a reinstatement, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the foreign limited partnership resumes its business as if the administrative revocation had never occurred.

WV Legislature

§47-9-54. Foreign limited partnership -- Transaction of business without registration.

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in the state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) A foreign limited partnership, by transacting business in the state without registration, appoints the Secretary of State as its agent for service of process with respect to claim for relief or cause of action arising out of the transaction of business in this state.

WV Legislature

§47-9-55. Action by Attorney General to restrain a foreign limited partnership.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

WV Legislature

§47-9-56. Right of action by limited partner.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

WV Legislature

§47-9-57. Proper plaintiff in derivative action.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

WV Legislature

§47-9-58. Pleading in derivative action.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

WV Legislature

§47-9-59. Expenses in derivative action.

If a derivative action is successful in whole or in part or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him

WV Legislature

§47-9-60. Construction and application of article.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting the same.

WV Legislature

§47-9-61. Short title of article.

This article may be cited as the "Uniform Limited Partnership Act."

WV Legislature

§47-9-62. Effective date of article.

The provisions of this article become effective on January 1, 1982.

WV Legislature

§47-9-63. Rules for cases not provided for in article.

In any case not provided for in this article, the provisions of the uniform partnership act, article eight-a of this chapter, shall apply.

WV Legislature

§47-9A-1. Right to acquire and dispose of property; execution of deeds and other writings.

Any persons who are now or who have heretofore been voluntarily associated together for the transaction or doing of business under and pursuant to the terms and provisions of a declaration of trust or articles or agreement of association, commonly designated as a Massachusetts trust or business trust, or any other lawful voluntary association by whatever name known, may purchase, acquire, hold, deal in, sell, lease, convey, exchange, pledge, mortgage and encumber any real estate or personal property or interest therein within this state, and may execute all deeds, leases, contracts, or other instruments in writing with respect to real estate or personal property or interest therein as may be necessary or required, either in the name or names of the trustees for the time being designated in such declaration, articles or agreement, or their successors, or in the name or names of another person or persons designated in such declaration, articles or agreement, or by a descriptive, assumed or trade name, when signed by a duly authorized officer or officers thereof, all as may be provided for and stated in such declaration, articles or agreement: Provided, That such association or trust shall have qualified to do business in West Virginia, as hereinafter provided for in sections two and three of this article.

WV Legislature

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

(a) For the purposes of this article, a "business trust" is any trust organized for the purpose of conducting business and commonly designated as a Massachusetts trust.

(b) Any business trust organized in this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; and (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust.

(c) Any business trust organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust as recorded in the state or country of origin of the business trust; and (3) a statement or certificate from the proper officer of the state or country of origin that the business trust is in good standing.

(d) An application for registration shall set forth:

(1) The name of the business trust;

(2) If organized within the state, a statement that it is a West Virginia business trust, or if organized outside the state, the state in which it was organized and the formation date of the business trust;

(3) The purpose or purposes for which the business trust is organized;

(4) The address of its principal office;

(5) The name and address of the person to whom notice of process may be sent, if any;

(6) The names and addresses of all trustees having authority to act on behalf of the business trust;

(7) A statement reflecting the business trust's consent to and recognition of the application to the business trust of the law of this state with respect to corporations; and

(8) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(e) An application for registration may contain the notarized signature of a trustee of the business trust.

(f) If the Secretary of State determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the business trust or its

WV Legislature

representative a receipt for the record and the fees.

WV Legislature

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

(a) For purposes of this article, a "voluntary association" is any association organized for the purpose of conducting business in this state, but does not include an organization formed as an unincorporated nonprofit association under the provisions of article eleven, chapter thirty-six of this code.

(b) Any voluntary association organized in this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; and (2) one executed original copy of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).

(c) Any voluntary association organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the agreement of association creating the voluntary association; and (3) a statement or certificate from the proper officer of the state or country of origin that the voluntary association is in good standing.

(d) An application for registration shall set forth:

(1) The name of the voluntary association;

(2) The principal office address of the voluntary association;

(3) The mailing address of the voluntary association, if different from the principal office address;

(4) The name and address of the person to whom notice of process may be sent, if any;

(5) Whether the voluntary association is organized for profit or as a nonprofit voluntary association;

(6) The purpose or purposes for which the voluntary association is formed;

(7) The full names and addresses of one or more of the organizers of the voluntary association;

(8) The full names and addresses of no fewer than two officers, owners or members of the voluntary association who have signatory authority for the association;

(9) Any additional statements as may be required for the type of business to be conducted;

(10) A statement reflecting the voluntary association's consent to and recognition of the application of the law of this state with respect to corporations to the voluntary association; and

WV Legislature

(11) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(e) An application for registration may contain the notarized signature of at least one organizer or member of the voluntary association.

(f) If the Secretary of State determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the voluntary association or its representative a receipt for the record and the fees.

WV Legislature

§47-9A-4. Application of laws relating to corporations; name of business trust or voluntary association; adoption and use of trade name and seal; amendment of declaration, articles or agreement; change of agent for service of process, trustees, and members; dissolution; filing.

(a) Unless otherwise specifically provided in this article, any business trust or voluntary association conducting business in this state is subject to the laws of this state with respect to corporations, including laws relating to license fees and all other taxes, to the extent such laws are applicable.

(b) The name of any business trust or voluntary association applying for registration shall meet the requirements for corporate names set forth in section four hundred one, article four, chapter thirty-one-d or section four hundred one, chapter thirty-one-e of this code, except that the name shall not contain the words "incorporated," "corporation," "limited," or any abbreviation of these terms.

(c) Any business trust or voluntary association may use a trade name upon complying with the provisions of section four, article eight, chapter forty-seven of this code. Any business trust or voluntary association may adopt and use a common seal.

(d) Upon the adoption of an amendment to the declaration, articles or agreement of trust of a business trust or the agreement of association of a voluntary association, the business trust or voluntary association shall file one executed original copy of the amendment, and may contain the notarized signature of at least one trustee of the business trust or at least one organizer or member of the voluntary association, with the office of the Secretary of State.

(e) Upon any change of trustees, organizers, members or other persons previously recorded as having authority to act on behalf of the business trust or voluntary association, or upon any change of the agent of the business trust or voluntary association for service of process, a business trust or voluntary association shall file notice of the change with the Secretary of State.

(f) Upon the determination of the majority of trustees of a business trust or a majority of members of a voluntary association that the business trust or voluntary association shall be dissolved; and after all debts, liabilities and obligations of the business trust or voluntary association have been paid and discharged, the business trust or voluntary association shall distribute all of the remaining assets of the business trust or voluntary association and file articles of dissolution with the Secretary of State in the manner provided for corporations in section one thousand four hundred three, article fourteen, chapter thirty-one-d, or section one thousand three hundred three, article thirteen, chapter thirty-one-e of this code. Upon verification by the appropriate state agencies that the business trust or voluntary association has paid all taxes, assessments and fees due to the state, the Secretary of State shall file it and deliver to the voluntary association or business trust or its representative a receipt for the record and the fees.

WV Legislature

(g) A business trust or voluntary association organized outside the state and registered to do business within this state may withdraw from the state in the manner provided for corporations in section one thousand five hundred twenty, article fifteen, chapter thirty-one-d or section one thousand four hundred twenty, article fourteen, chapter thirty-one-e of this code.

(h) No document required to be filed by this section shall be filed with the Secretary of State unless the trustee of the business trust or the organizer or member of the voluntary association is currently authorized as such.

WV Legislature

§47-9A-5. Providing for use of trade names; acknowledgment of deeds and other writings.

Any declaration, articles or agreement of trust of a business trust and any agreement of association of a voluntary association which provides for the use of a trade name shall authorize and designate or shall contain provisions for the authorization or designation of persons by whom deeds, leases, contracts and other written instruments shall be executed. All such deeds, leases, contracts and other instruments in writing shall be deemed to be properly acknowledged for the purposes of recordation if acknowledged in the form provided by statute for acknowledgments by corporations, or, if executed by trustees or other persons, then in the form provided by statute therefor.

WV Legislature

§47-9A-6. Validation of deeds and other writings heretofore executed.

All such deeds, leases, contracts and other written instruments with respect to real or personal property or any interest therein within this state heretofore made and delivered by any business trust or voluntary association which comply with the requirements of this article are hereby expressly validated.

WV Legislature

§47-9A-7. Repeal of conflicting acts; severability.

All acts or parts of acts in conflict with this article are hereby repealed.

The provisions of this article shall be construed to be severable and if any are held unconstitutional or otherwise invalid, such invalidity or unconstitutionality shall not affect the operation of the remaining provisions.

WV Legislature

§47-10-1. Fraudulent sale of liquid fuels, lubricating oils, etc., prohibited.

It shall be unlawful for any person, firm or corporation to store, expose for sale, offer for sale, or sell, any liquid fuels, lubricating oils, or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality and identity of the product so sold or offered for sale.

WV Legislature

§47-10-2. Unlawful to sell from distributing equipment any liquid fuels, etc., other than those named thereon.

It shall be unlawful for any person, firm or corporation to store, expose for sale, offer for sale, or sell, from any tank or container, or from any pump, or other distributing device or equipment, any other liquid fuels, lubricating oils, or other similar products, than those indicated by the name, trade name, symbol, sign, or other distinguishing mark or device of the manufacturer or distributor, either as owner or licensee, appearing upon the tank, container, pump, or other distributing equipment, from which the same are sold, offered for sale or distributed.

WV Legislature

§47-10-3. Unlawful to imitate designs or trade names of recognized brands of liquid fuels, etc.

It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol or trade name under which recognized brands of liquid fuels, lubricating oils, and similar products are generally marketed.

WV Legislature

§47-10-4. Unlawful to sell under established trade name any substituted, mixed, adulterated or other liquid fuels, etc., than those manufactured or distributed under such trade name.

It shall be unlawful for any person, firm or corporation, to expose for sale, offer for sale, or sell, under any trademark or trade name in general use, any liquid fuels, lubricating oils or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils or other like products, under such trademark or trade name, either as owner of such trademark or as licensee, or to substitute, mix, or adulterate the liquid fuels, lubricating oils, or other similar products, sold, offered for sale, or distributed, under such trademark or trade name.

WV Legislature

§47-10-5. Unlawful to deliver into distributing device any other liquid fuels, etc., than those indicated by trade name thereon.

It shall be unlawful for any person, firm or corporation to aid or assist any other person, firm or corporation in the violation of the provisions of this article, by depositing or delivering in any tank, receptacle, or other container, any other liquid fuels, lubricating oils, or like products, than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trademark or trade name of the product displayed on the container itself, or on the pump, or other distributing device used in connection therewith.

WV Legislature

§47-10-6. Trade name of lubricating oil to be shown; sign showing no trade name.

There shall be firmly attached to or painted at or near the point of outlet from which lubricating oil is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in letters not less than one inch in height, comprising the brand or trade name of such lubricating oil: Provided, That if any such lubricating oil shall have no brand or trade name, the above-required sign or label shall consist of the words, "Lubricating oil, no brand."

WV Legislature

§47-10-6a. Posting of the alcoholic content of gasoline.

Any retail distributor of gasoline who sells gasoline to which has been added any alcohol, whether methanol, ethanol or other form of alcohol, shall post upon or near every pump maintained for the delivery of gasoline to a consumer a prominent notice stating the name of the alcoholic additive and the percentage it comprises of the gasoline delivered through the pumps.

WV Legislature

§47-10-7. Offenses; penalties; revocation of distributor's license.

Any person, firm or corporation, or any officer, agent, or employee thereof, who shall violate any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine, for the first offense, of not less than $25 nor more than $200; and for a second or any subsequent offense, by a fine of not less than $50 nor more than $500; and in addition to the penalties aforesaid, upon conviction of a second offense hereunder, the permit and license certificate provided for by section two, article fourteen, chapter eleven of this code, theretofore issued to such violator, shall be canceled and taken up by the State Tax Commissioner; and no other certificate of license shall be issued to such person by said State Tax Commissioner for a period of one year from the date of such cancellation.

WV Legislature

§47-11-1.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-2.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-3.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-4.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-5.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-6.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-7.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11-8.

Repealed.

Acts, 1976 Reg. Sess., Ch. 115.

WV Legislature

§47-11A-1. Legislative findings; designation of article.

(a) The Legislature hereby finds that the sale of goods at prices below the cost thereof can result in economic maladjustments and tend toward the creation of monopolies, thereby destroying fair and healthy competition; therefore, the below-cost sale of goods with the intent to destroy or the effect of destroying competition is deemed an unlawful unfair trade practice.

(b) This article shall be known as and designated the Unfair Trade Practices Act.

WV Legislature

§47-11A-2. When selling below cost prohibited; penalty.

Except as otherwise provided in this article, it shall be unlawful for any person, partnership, firm, corporation, or other entity engaged in business as a retailer or wholesaler within this state to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than the cost thereof with the intent to destroy or the effect of destroying competition. Each violation shall constitute a misdemeanor and, upon conviction thereof, any person, partnership, firm, corporation, or other entity violating this section shall be subject to the penalty set forth in §47-11A-11 of this code.

WV Legislature

§47-11A-3. When rebates and special privileges prohibited; penalty.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, partnership, firm, corporation, joint-stock company, or other association resorting to such trade practice shall be deemed guilty of a misdemeanor and, on conviction thereof shall be subject to the penalties set out in section eleven of this article.

WV Legislature

§47-11A-4. Personal responsibility of directors, officers or agents.

Any person who, either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of this article, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or for which he acts.

WV Legislature

§47-11A-5. “Retailer” and “wholesaler” defined; sales and transfers subject to article.

(a) The term “retailer” shall mean and include every person, partnership, firm, corporation, or other entity engaged in the business of making sales at retail within this state: Provided, however, That in the case of a person, partnership, firm, corporation, or other entity engaged in the business of making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

(b) The term “wholesaler” shall mean and include every person, partnership, firm, corporation, or other entity engaged in the business of making sales at wholesale within this state: Provided, That in the case of a person, partnership, firm, corporation, or other entity engaged in the business of making sales both at retail and wholesale, such term shall be applied only to the wholesale portion of such business.

(c) The provisions of this article shall be applicable to all sales at retail made by a retailer as herein defined, and shall be applicable to any transfer for a valuable consideration made in the ordinary course of trade, or the usual prosecution of the retailer's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further proceedings or manufacturing, and shall be applicable also to any transfer of such property where title is retained by the retailer as security for the payment of such purchase price.

(d) The provisions of this article shall be applicable to all sales at wholesale, and shall be applicable to any transfer for a valuable consideration made in the ordinary course of trade or in the usual prosecution of the wholesaler’s business, of title to tangible personal property to the purchaser for purposes of resale or further proceedings or manufacturing, and shall be applicable also to any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

WV Legislature

§47-11A-6. How cost determined.

(a) The term “cost” when applicable to the business of retailer shall mean bona fide cost andshall mean: (i) The invoice cost of each separate or distinct product or item of merchandise to the retailer to include applicable taxes, or the replacement cost thereof to the retailer within 30 days prior to the date of sale, offer for sale, or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts, except customary discounts for cash; and (ii) to either of which there shall be added

freight charges not otherwise included in the cost of the article, product, or item of merchandise, but which freight charges shall not be construed as including cartage to retail outlet if done or paid for by the retailer.

(b) The term “cost” when applicable to the business of a wholesaler shall mean bona fide cost and shall mean: (i) The invoice cost of the merchandise to the wholesaler to include applicable taxes, or the replacement cost of the merchandise to the wholesaler within 30 days prior to the date of sale, offer for sale, or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts except customary discounts for cash; and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product, or item of merchandise, but which freight charges shall not be construed as including cartage to the retail outlet if done or paid for by the wholesaler;

(2) A markup to cover, in part, the cost of doing business, which markup in the absence of proof of a lesser cost, shall be four percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges: *Provided*, That such a markup to cover the cost of doing business as provided for in this subdivision shall be exclusive of any federal and state motor fuel taxes.

WV Legislature

§47-11A-7. When invoice cost of goods purchased at forced, etc., sale may be used.

In establishing the "cost" of a given article, product or item of merchandise to the vendor, the invoice cost of any article, product or item of merchandise purchased at a forced, bankrupt, close-out sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of said sale of said article, product or item of merchandise replaced through the ordinary channels of trade, unless said article, product or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless said article, product or item of merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, close-out sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

WV Legislature

§47-11A-8. Sales exempt.

The provisions of this article shall not apply to any sale, offer for sale, or advertisement to sell made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing trade in any such stock or commodity;

(b) When perishable merchandise must be sold promptly to avert loss to the retailer or wholesaler by spoilage or depreciation;

(c) When the goods are damaged or deteriorated in quality or when merchandise is sold in bona fide clearance sales and, in each case, merchandise is advertised, marked and sold as such;

(d) By an officer acting under the orders of any court;

(e) To meet the price of a competitor;

(f) Involving a discount or rebate earned by purchases through the use of a bonus, loyalty or rewards program or involving the redemption of credits, discounts or rebates through a bonus, loyalty or rewards program;

(g) For charitable purposes or to relief agencies;

(h) Where merchandise is sold on contract to departments of the government or governmental institutions; and

(i) During and for fifteen days after a business grand opening as determined by the completion date.

WV Legislature

§47-11A-9. Injunctions; damage suits; and jurisdiction.

(a) Any person, partnership, firm, corporation, or other entity injured by a violation of §47-11A-2 or §47-11A-3 of this code may maintain an action to enjoin a continuance of any such violation in the circuit court of the county wherein said violation is alleged to have occurred. If a violation is established in such an action, the court shall enjoin, restrain, or otherwise prohibit such violation. In such action, if damages are alleged and proven, the plaintiff in the action, in addition to injunctive relief, shall recover from the defendant the actual damages sustained and proven to be a result of the violation, and the court may award the plaintiff treble damages, court costs, litigation costs, and attorneys' fees.

(b) In the event no injunctive relief is sought or required, any person, partnership, firm, corporation, or other entity injured by a violation of the provisions of this article may maintain an action for damages alone in the circuit court of the county wherein said violation is alleged to have occurred. If a violation is established in such an action and proven, a plaintiff shall recover from the defendant the actual damages sustained and proven to be a result of the violation, and the court may award the plaintiff treble damages, court costs, litigation costs, and attorneys' fees.

(c) In any action under subsections (a) and (b) of this section it shall be an absolute defense that the sale price of any product or item of merchandise alleged to be in violation of this article is equal to or greater than the sales price of the same product or item being sold by a competitor of the defendant.

(d) A court may dismiss any action under subsections (a) and (b) of this section upon a motion for summary judgment if the court finds pursuant to Rule 56 of the West Virginia Rules of Civil Procedure that the provisions of subsection (c) of this section have been satisfied.

(e) The circuit courts of this state shall have jurisdiction of actions under this section.

WV Legislature

§47-11A-10

Repealed.

Acts, 2016 Reg. Sess., Ch. 217

WV Legislature

§47-11A-11. Penalties for violations.

Any person, firm, partnership, corporation, joint-stock company or other association, whether as principal, agent, officer or director, for or itself, or for another person, or for any person, firm, partnership, corporation, joint- stock company or other association, who or which shall violate any of the provisions of this article, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment not exceeding ninety days or by both said fine and imprisonment, in the discretion of the court.

WV Legislature

§47-11A-12

Repealed.

Acts, 2016 Reg. Sess., Ch. 217

WV Legislature

§47-11A-12a. Unsolicited goods.

No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

WV Legislature

§47-11A-13

Repealed.

Acts, 2016 Reg. Sess., Ch. 217

WV Legislature

§47-11A-14. Purposes of article.

The Legislature declares that the purposes of this article are: (1) To safeguard consumers from the creation of monopolies by prohibiting predatory pricing; (2) to foster market efficiency; and (3) to protect market competition.

WV Legislature

§47-11B-1. Legislative findings.

The Legislature hereby finds and declares that certain sales of goods, defined in this article as "closing-out sales,""sales of goods damaged by fire, smoke or water" or "defunct business sales" have heretofore often been advertised and conducted in such manner as to mislead and defraud the public or otherwise harm the public and that such sales should be licensed and regulated to prevent misrepresentation and fraud and to protect and promote the public welfare.

WV Legislature

§47-11B-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) The term "closing-out sale" shall include but not be limited to all sales advertised, represented or held forth under the designation of "quitting business,""going out of business," "discontinuance of business,""selling out,""liquidation,""lost our lease,""must vacate,""forced out,""removal,""branch store discontinuance sale,""building coming down,""end,""final days,""last days,""lease expires,""we give up sale,""we quit sale,""warehouse closing sale,""reorganization sale" and any other advertising or designation by any other expression or characterization similar to any of the foregoing and giving notice to the public that the sale will precede the abandonment of a business location.

(b) The term "sale of goods damaged by fire, smoke or water" shall include but not be limited to all sales advertised, represented or held forth under the designation of "fire sale," "smoke damage sale,""water damage sale,""flood damage sale," "insurance sale" and any other advertising or designation by any other expression or characterization similar to any of the foregoing and giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.

(c) The term "defunct business sale" shall include but not be limited to all sales advertised, represented or held forth under the designation of "adjuster's sale,""administrator's sale,""assignee's sale,""bankrupt sale,""bankrupt stock sale," "benefit of administrator's sale,""benefit of creditor's sale," "benefit of trustee's sale,""creditor's committee sale," "creditor's sale,""executor's sale,""insolvent sale,""mortgage sale,""receiver's sale,""trustee's sale" and any other advertising or designation by any other expression or characterization similar to any of the foregoing and conveying the same meaning or giving notice to the public of a sale resulting from death, business failure, or other adversity.

(d) "Unusual purchase or addition" shall mean any purchase of goods, wares or merchandise during the ninety days preceding the application for a license the total value of which is at least twenty-five percent greater than purchases made by the applicant for a like ninety-day period during any one of three years next immediately preceding the year in which the application is made or his peak purchases for any ninety-day period if he has been in business for less than three years.

(e) "Commissioner" shall mean the state commissioner of labor.

(f) "Person" shall mean any individual, partnership, association, firm or corporation or the plural thereof.

WV Legislature

§47-11B-3. License required; exceptions.

It shall be unlawful for any person in this state to advertise or conduct any sale of any goods, wares or merchandise which is a "closing-out sale,""a sale of goods damaged by fire, smoke or water," or a "defunct business sale" unless a license is first obtained to conduct such a sale from the commissioner as provided in this article.

This article shall, however, not be construed to apply to or affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons who are required to file an accounting with a court of competent jurisdiction.

(3) Persons acting in accordance with their powers and duties as public officers such as sheriffs, constables and marshals.

(4) Any publisher or employee of a newspaper, magazine or any operator or employee of a radio or television broadcasting station who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading character or without knowledge that the provisions of this article are not being complied with.

(5) Persons conducting sales by and on behalf of licensed insurers.

WV Legislature

§47-11B-4. License application requirements.

Any person desiring to conduct a sale regulated by this article shall make a written application under oath to the commissioner. Said application shall be accompanied by the approved bond specified in section nine of this article. If the application is for a "closing-out sale" or a "defunct business sale," it shall be filed at least ten days prior to the date on which such sale is to commence. If the application is for a "sale of goods damaged by fire, smoke or water," it may be made at any time prior to the date on which such sale is to commence.

All applications for a licensed sale regulated by this article shall set forth and contain the following information:

(1) The name and address of the applicant who must be the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners, or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the state and the names and addresses of all the officers of the applicant.

(2) The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.

(3) The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.

(4) The date on which it is proposed to begin the sale.

(5) The nature of the occupancy where such sale is to be held whether by lease or otherwise and the effective date of termination of such occupancy.

(6) The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.

(7) A statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale.

(8) A statement that the business is to be terminated permanently or reopened at another location, the location of the premises at which the business is to be moved, if the applicant intends to resume the operation of the business upon the termination of the sale, and the name or designation under which such business is to be resumed.

(9) A full, complete, detailed and itemized inventory of the goods, wares and merchandise to be offered at such sale as disclosed by applicant's records which inventory shall:

(i) Itemize the goods to be offered for sale and contain sufficient information concerning each item including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it.

WV Legislature

(ii) List separately any goods to be offered for sale which were purchased and received during a ninety-day period immediately prior to the date of making application for the license.

(iii) The total retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the inventory used for applicant's most recent federal income tax return adjusted for sales and purchases.

(iv) If the application is for a license to conduct a "sale of goods damaged by fire, smoke or water" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application certified copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise.

(v) If the application is for a license to conduct a "defunct business sale" and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application certified copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for benefit of creditor, referee in bankruptcy or the personal representative of a decedent.

(10) A statement that no goods will be added to the inventory after the application is made.

(11) A statement that all goods included in such inventory have been purchased by the applicant for resale on bona fide orders without cancellation privileges and that said inventory comprises no goods purchased on consignment.

(12) A statement that no merchandise listed in the inventory has been the subject of a licensed sale conducted within one year prior to the date of the application unless such merchandise was damaged by fire, smoke or water while in the possession of the applicant.

WV Legislature

§47-11B-5. Investigation of application; grounds for denial.

Upon receipt of the application, the commissioner may in his discretion make or cause to be made an examination or order an investigation of the applicant and all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances are found by him to exist:

(1) That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least three months prior to the date of the application or, if the applicant be a partnership, corporation or association, controlling interest in the corporation or association was transferred within six months prior to the date of the application for a license hereunder except:

(i) Where the application is for a license for a "sale of goods damaged by fire, smoke or water" or a "defunct business sale" and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder.

(ii) Upon the death of a person doing business in this state, his heirs, distributees, devisees, legatees or their successors and assigns shall have the right to apply at any time for a license hereunder.

(iii) Where a business is required or compelled to be discontinued because the premises whereupon it is being conducted has been condemned, taken for purposes of urban renewal or development, or because the premises must be vacated because of legal or judicial proceedings.

(2) That in the case of a "closing-out sale" the applicant either as owner, partner, member of an association, or principal stockholder of a corporation was granted a prior license hereunder within one year preceding the date of the filing of the application.

(3) That the inventory contains goods, wares or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges.

(4) That the inventory contains goods, wares or merchandise purchased by the applicant on consignment except if the consigned goods, wares or merchandise have been damaged while in the consignee's possession.

(5) That the applicant except in the case of an application for a license to conduct a "sale of goods damaged by fire, smoke or water" or a "defunct business sale" either as owner, partner, officer of an association, or principal stockholder of a corporation was granted a prior license hereunder within one year preceding the date of the filing of the application at the particular location for which the license is sought or within one year prior to the date of filing of the application has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the

WV Legislature

license is sought was to be closed out or terminated.

(6) That the applicant has within one year, prior to the filing of the application, been convicted of a violation of this article.

(7) That the goods, wares or merchandise as described in the inventory were transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.

(8) That the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. For this purpose any unusual purchase or addition to the stock of such goods, wares and merchandise made within ninety days prior to the date of the filing of such application shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.

(9) That any representation made in the application is false.

WV Legislature

§47-11B-6. Duration of sale; license fee.

A license to conduct a sale issued pursuant to this article shall be good for no more than a period of thirty consecutive calendar days and may be renewed for one consecutive period not exceeding thirty consecutive calendar days upon the affidavit of the applicant that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this article by purchase, acquisition on consignment, or otherwise. The application for renewal shall be made not more than ten days prior to the time of the expiration of the license and shall contain a new inventory of the goods remaining on hand at the time the application for renewal is made which new inventory shall be prepared and furnished in the same manner and form as the original inventory. The commissioner shall receive from the applicant for such license, upon the granting thereof, a fee of $50 and upon the renewal thereof a fee of $100. The applicant shall not be entitled to a refund of the fee paid if said application is refused, denied or revoked.

WV Legislature

§47-11B-7. Revocation of license; grounds.

The commissioner may, on his own initiative, or shall, upon the written and verified complaint of any resident of this state, investigate any person licensed by him under the provisions of this article to determine if such person is violating or has violated this article. The commissioner shall immediately revoke such person's license if, after such investigation, he shall determine that:

(1) Any sale by the applicant is conducted in violation of any provision of this article,

(2) The applicant has made any material misstatement in his application for said license,

(3) The applicant has failed to include in the inventory required by the provisions of this article the goods, wares or merchandise required to be contained in such inventory,

(4) The applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale any goods, wares or merchandise not described in the original application and inventory, or

(5) The applicant made or permitted to be made any false, misleading or deceptive statements in advertising said sale, whether written or oral, or in displaying, ticketing or pricing goods, wares or merchandise offered for sale.

WV Legislature

§47-11B-8. Notice of denial, refusal or revocation of license; judicial review thereof.

Whenever the commissioner shall deny or refuse to issue a license or shall revoke any license, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or person licensed by him as the case may be. Such order shall be accompanied by findings of fact and conclusions of law upon which such order was made and entered. Any person adversely affected by an order made and entered by the board is entitled to judicial review thereof. Such judicial review shall be in the circuit court for the county in which the sale is to be or is being conducted. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the Attorney General, may employ special counsel to represent the commissioner in a particular proceeding.

WV Legislature

§47-11B-9. Bond required.

No license shall be issued unless the applicant files with the commissioner a bond with corporate surety payable to the State of West Virginia conditioned upon the faithful observance of all the provisions of this article, the payment to any municipality or the state of all taxes due and owing or which may become due and the indemnifying of any purchaser at such sale who suffers any loss by reason of misrepresentation made in connection with such sale: Provided, That the aggregate liability of the surety for all breaches of the conditions of the bond shall in no event exceed the amount of said bond. The amount of said bond shall be determined as follows: Five percent of the first $100,000 of the retail value of all the goods, wares and merchandise to be offered at such sale, two percent of the next $400,000 and one percent of the balance. Said bond shall be approved as to form and sufficiency by the prosecuting attorney or his assistant of the county in which such sale is to be conducted.

WV Legislature

§47-11B-10. Branch stores and warehouses.

If the applicant owns, conducts or operates more than one store or warehouse in connection with such store or warehouse specified in the application, the license issued will apply only to the one store or warehouse for which it was issued and no other store or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale, nor shall the licensed store or warehouse or any person advertise or represent that any other person, store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store or warehouse of a chain or group of stores or warehouses shall be conducted solely at the location of the store or warehouse for which the license was obtained and no goods, wares or merchandise shall be brought from any other store or warehouse and placed on sale at the store or warehouse licensed to conduct a sale hereunder.

WV Legislature

§47-11B-11. Substitution, addition and commingling of goods voids license; change of time or place of sale; certain purchases prohibited.

(a) Any substitution for or addition to goods described in an inventory filed pursuant to this article or any change in the time or place for a sale conducted pursuant to this article shall be unlawful and shall void any license issued to conduct a sale pursuant to this article and such license shall be revoked.

(b) In the case of a sale licensed under this article conducted by any person licensed under this article in addition to conducting a business or selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods to be sold at such sale shall be clearly and distinctly segregated, marked or identified and advertised, if at all, so that both on display and in advertising such goods may be readily distinguished from other stocks and their identity readily ascertained. Any commingling of such goods with other stocks of such person in such a manner as to cause the goods to lose their separate identity either on display or in advertising shall be unlawful.

WV Legislature

§47-11B-12. Copy of application, inventory and license to be posted; license to be referred to in advertisements.

A copy of the application for a license to conduct a sale under this article, including a copy of the inventory filed therewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold so that the public may be informed of the facts relating to the goods before purchasing same. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration, and if applicable, the location where the business is to be resumed.

WV Legislature

§47-11B-13. Opening of a similar business within one year of sale prohibited.

Opening of a business similar to the one for which the sale licensed pursuant to this article was conducted except the licensed "sale of goods damaged by fire, smoke or water" by the person, partner of a partnership, officer of an association, or principal stockholder of a corporation who or which conducted the sale upon the same premises within one year of the termination of the sale shall constitute a violation of this article. Every day in which business is conducted within the prohibited period of one year shall constitute a separate violation of this article.

WV Legislature

§47-11B-14. Records.

(a) Suitable books and records concerning said sale shall be kept by the licensee for the duration of the licensed sale and one year thereafter and shall be open for inspection by the commissioner or his duly authorized representative.

(b) Upon the termination of a sale licensed hereunder the applicant shall within thirty days of such termination file a statement with the commissioner stating:

(1) The total retail value of the goods, wares or merchandise not disposed of during the sale, and

(2) The ultimate disposition thereof and if transferred to another, the name and address of the transferee.

WV Legislature

§47-11B-15. Penalties for violations.

Any person who shall violate any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment not exceeding thirty days. Each day any sale is conducted in violation of the provisions of this article shall constitute and be a separate violation of the provisions of this article.

WV Legislature

§47-11B-16. Severability.

If any part or parts of this article shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the Constitutionality or validity of the remaining part or parts of this article. The Legislature hereby declares that it would have passed the remaining part or parts of this article if it had known that such part or parts would be declared unconstitutional or invalid.

WV Legislature

§47-11B-17. Effective date.

This article shall become effective on July 1, 1967.

WV Legislature

§47-11C-1. Short title.

This article shall be known and may be cited as the "West Virginia Petroleum Products Franchise Act."

WV Legislature

§47-11C-2. Definitions.

As used in this article:

(1) "Adult" means any person who is not a minor;

(2) "Dealer" means any person, other than an agent or employee of a producer, who is engaged in the retail sale of petroleum products under a franchise agreement as defined by this section;

(3) "Designated family member" means the adult spouse or the adult child or stepchild of the dealer or any other adult person related to the dealer by either the half or whole blood or the adult spouse of any other adult person, who has experience in the service station business and who, in the case of the dealer's death or retirement, is designated in the franchise agreement for a service station as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession;

(4) "Franchise" or "franchise agreement" means a written agreement between a producer and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by the producer, or a written agreement between a producer and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the producer, for the purpose of engaging in the retail sale of petroleum products of the producer;

(5) "Good cause" means failure of the dealer to make good faith effort to comply with any material requirement of a franchise agreement;

(6) "Producer" means every person who produces, refines, manufactures, processes or otherwise alters any motor fuel and other petroleum products for sale or use in this state; and

(7) "Service station" means any filling station, store, garage or other place of business in this state for the retail sale of motor fuel and other petroleum products.

WV Legislature

§47-11C-3. Franchise agreement.

Every franchise agreement between a producer and a dealer shall be subject to the following provisions whether or not they are expressly set forth in the agreement:

(1) The term of the initial agreement between the producer and the dealer relating to specific premises shall not be less than one year; the term of the second agreement between the producer and the dealer, relating to the same premises, shall also be for not less than one year; and the term of all subsequent agreements between the producer and the dealer, relating to the same premises, shall be of not less than two years. This subdivision shall not be construed to require a term of greater duration than the remainder of the term to which the producer is entitled under its lease without regard to any renewal rights which the producer may have;

(2) No producer shall require a dealer to keep his station open for business more than seventy-two hours per week;

(3) The dealer alone shall determine his retail sale price of the products listed in the franchise agreement;

(4) In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, giveaway or rebate in the operation of his retail outlet: Provided, That the producer may require the dealer to distribute to customers premiums, coupons or giveaways which are furnished to the dealer at the expense of the producer;

(5) In the event of any termination, cancellation or failure to renew, whether by mutual agreement or otherwise, a producer shall, within thirty days, tender to the dealer, for the products he sold to the dealer which the dealer has been unable to sell, except to the extent that such may be damaged or not resalable, the full price originally paid by the dealer for the products: Provided, That the producer shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer. Such repurchase shall not constitute a waiver of the dealer's other rights and remedies under this article. If the producer does not make such tender within thirty days, the dealer may sell the products for a price which is not less than the full price originally paid by the dealer for such products, and shall have a cause of action against the producer for the balance;

(6) The right of either party to a trial by jury or to the interposition of counterclaims or cross claims shall not be waived;

(7) Liability imposed on, and rights granted to, any person by this article shall not be waived;

(8) The dealer shall not be required to forego his right of free association with other dealers

WV Legislature

for any lawful purpose;

(9) No transfer or assignment of a franchise by a dealer to a qualified transferee or assignee shall be unreasonably disapproved by the producer;

(10) No producer shall require any dealer to sell exclusively any products, other than petroleum products, that such producer offers for sale.

WV Legislature

§47-11C-4. Disclosures to prospective dealers.

A producer shall disclose in writing to any prospective dealer the following information, before any franchise is concluded:

(1) The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period which the location has been supplied by the producer, whichever is shorter;

(2) The name and last-known home address of the previous dealer or dealers for the last three years, or for and during the entire period for which the location has been supplied by the producer, whichever is shorter, and the reason or reasons for the termination of each dealer franchise;

(3) Any legally binding commitments for the sale, demolition or other disposition of the location;

(4) The training programs, if any, and the specified goods and services the producer will provide for and to the dealer;

(5) Full disclosure of any and all obligations which will be required of the dealer, including, but not limited to, any obligation to exclusively deal in any of the products of the producer, its subsidiaries, any other company or any advertising and promotional items that the dealer must accept;

(6) Full disclosure of all restrictions on the sale, transfer, renewal and termination of the agreement.

WV Legislature

§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.

(1) No producer directly or indirectly through any officer, agent or employee shall terminate, cancel, or refuse to renew a franchise without good cause or other grounds as provided in this section, and without having first given written notice to the dealer. Such notice shall contain a statement of the producer's intention to terminate, cancel, or refuse to renew, the reasons therefor, the date on which such action shall take effect, and a reference to this article and the remedies available to such dealer. Such notice must be given at least sixty days in advance of the action to be taken, except where the premises have been abandoned by the dealer for five consecutive days or where the producer and dealer mutually agree in writing to a shorter notice period. In circumstances where it would not be reasonable to provide advance notice of sixty days, the franchiser shall provide notice at the earliest date as is reasonably practicable. In no event shall any such notice period be less than thirty days.

(2) It shall be a violation of this article for any producer to directly or indirectly terminate, cancel or fail to renew an agreement with the dealer unless the termination, cancellation or failure to renew is for good cause. Good cause includes but is not limited to:

(a) Where the dealer has filed for or has been declared bankrupt or has petitioned for a reorganization, creditor arrangement or insolvency under the applicable statutes;

(b) Where there has been dissolution of a partnership or corporation or other entity carrying on the business;

(c) Where the producer has lost its right to grant possession of the premises;

(d) Where there has been willful or malicious destruction of the property of the producer by the dealer;

(e) Where there has been failure to pay financial obligations to the lessor producer when due, including, but not limited to, rents or payment for gasoline, petroleum products or accessories supplied to the lessee dealer by the lessor producer;

(f) Where there has been adulteration, commingling, mislabeling or misbranding of products supplied by the producer;

(g) Where there has been failure by the dealer to comply with federal, state or local laws or regulations which are related to the operation of the gasoline service station business and which may affect the relationship between the producer and the dealer and such failure to comply therewith has or may have an adverse effect on the producer;

(h) Where there has been a conviction of the dealer of a criminal offense which is related to the operation of the business or would affect the ability of the dealer to operate the business or would tend to defame the reputation of the producer;

WV Legislature

(i) Where there has been the death or other incapacity of the dealer to manage his station;

(j) Where the producer totally withdraws from marketing in the state in which the leased property is located;

(k) Where there has been the receipt by the producer of twenty-four written bona fide customer complaints concerning the dealer's quality of service or unsanitary restrooms within any twelve-month period;

(l) Where there has been expropriation, appropriation, condemnation, or other taking of the premises, in whole or in part, pursuant to the power of eminent domain; or

(m) Where there has been substantial damage to or loss of the premises covered by the agreement.

(3) Nothing in subsection two shall prohibit termination, cancellation or failure to renew:

(a) If there is a failure on the part of the producer and the dealer to agree upon the terms of a renewal agreement where both parties have acted in good faith in trying to effect such a renewal;

(b) If there is a mutual termination executed by the parties;

(c) Where there is such cause for termination as a court of competent jurisdiction might find to be reasonable and just under all of the circumstances; or

(d) If the producer intends to use the premises for purposes other than the sale of motor fuel: Provided, That motor fuel may not be sold for a period of two years following the date of termination, cancellation or failure to honor the option to renew.

WV Legislature

§47-11C-5a. Motor fuel franchise agreements.

(a) Effective July 1, 1983, every franchise agreement entered into between a producer and dealer shall contain provisions which comply with this section.

(b) A dealer shall have the right, effective upon his death or retirement, to have his interests under a franchise agreement assigned to a designated family member who has been approved by the producer in accordance with the producer's reasonable standards for personal and financial condition unless the producer shows that the designated family member no longer meets the reasonable standards set at the time of the previous approval. All franchise agreements shall contain a provision identifying the designated family member who is entitled to succeed to the interests of the dealer under the agreement upon his death or retirement. The foregoing shall not prohibit a producer from requiring as a condition to honoring the succession that the designated family member accept a trial franchise within thirty days of the dealer's death or retirement and that the designated family member attend a training program offered by the producer. As used herein, the term "trial franchise" shall have the same meaning as the same is defined in the federal petroleum marketing practices act (15 U.S.C., paragraph 2801, et seq.).

(c) A dealer and producer may mutually agree to change the designated family member entitled to succeed to the dealer's interests under a franchise agreement. The designated family member shall provide, upon the request of the producer, personal and financial data that is reasonably necessary to determine whether the succession shall be honored. The producer shall not be obligated to accept a designated family member under this subsection who does not meet the producer's reasonable standards, but any refusal to accept the designated family member as a successor dealer shall be given by the producer in writing to the dealer and shall fairly state the reason therefor.

WV Legislature

§47-11C-6. Damages; remedies.

(1) Any producer or dealer, aggrieved by a violation of this article may bring an action for legal or equitable relief, including reasonable attorney fees, in the circuit court of the county in which the franchised premises are located.

(2) No action may be brought under the provisions of this article for a cause of action which arises more than two years prior to the date on which such action is brought.

WV Legislature

§47-11C-7. Application.

This article shall not apply to a franchise granted prior to the effective date of this article provided that a renewal or extension of such a franchise shall not be excluded from the application of this article.

WV Legislature

§47-11C-8. Effective date.

This article shall take effect on July 1, 1976.

WV Legislature

§47-11D-1. Purpose.

The purpose of this article is to establish fair and open procedures for bidding and negotiating for the exhibition of motion pictures within this state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the movie-going public by holding down admission prices to motion picture theatres, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibiting it.

WV Legislature

§47-11D-2. Definitions.

When used in this article, unless the context indicates otherwise:

(1) "Person" includes one or more individuals, partnerships, associations, societies, trusts or corporations.

(2) "Theatre" means any establishment in which motion pictures are exhibited to the public regularly for a charge.

(3) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing.

(4) "Exhibitor" means any person engaged in the business of operating one or more theatres.

(5) "Exhibit" or "exhibition" means showing a motion picture to the public for a charge.

(6) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a motion picture.

(7) "Bid" means a written or oral offer or proposal by an exhibitor to a distributor, in response to an invitation to bid or otherwise, stating the terms under which the exhibitor will agree to exhibit a motion picture.

(8) "License agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor.

(9) "Trade screening" means the showing of a motion picture by a distributor, which showing is open to any of this state's exhibitors who are interested in exhibiting the motion picture.

(10) "Blind bidding" means the bidding for, negotiating for, or offering or agreeing to terms for the licensing or exhibition of a motion picture before that motion picture has been trade screened for this state's exhibitors.

(11) "Run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area, a "second run" is the second exhibition and "subsequent runs" are all exhibitions after the second run.

WV Legislature

§47-11D-3. Blind bidding prohibited; invitation to bid; provisions of article waived as to certain exhibitors.

(a) Blind bidding is hereby prohibited within the state. No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed to, for the exhibition of any motion picture within the state before that motion picture has been trade screened either within the state or, alternatively, at the local exchange serving the geographic area within the state for which bids have been invited.

(b) A distributor shall include in each invitation to bid for a motion picture for exhibition within the state, if such motion picture has not already been trade screened within the state, the date, time and place of the trade screening of the motion picture either within the state or alternatively, at the local exchange serving the geographic area within this state for which bids have been requested.

(c) A distributor shall provide reasonable and uniform notice to all exhibitors in each competitive market within the state of all trade screenings for that competitive market of motion pictures he is distributing.

(d) The provisions of this article are waived with respect to West Virginia exhibitors whose theatres are located within twenty miles of a state line of a state where a provision for prior trade screening before bidding has not been adopted, so long as theatres exist within the other state within twenty miles of the state line between that state and West Virginia and no further than twenty miles from at least one West Virginia exhibitor's theatre in the same competitive market. Any other purported waiver of the requirements of this article shall be void and unenforceable.

WV Legislature

§47-11D-4. Bidding procedures.

If bids are solicited from exhibitors for the licensing of a motion picture within the state, then:

(1) The invitation to bid shall specify (i) the number and length of runs for which the bid is being solicited, whether it is a first, second or subsequent run, and the geographic area for each run; (ii) the earliest availability date of the motion picture; (iii) the names of all exhibitors who are being solicited; (iv) the date and hour the invitation to bid expires; and (v) the location, including the address, where the bids will be opened, which shall be within the state, or at the local exchange serving the geographic area for which the bids have been requested.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and are present at such time.

(3) After being opened, bids shall be subject to examination by any exhibitors, or their agents, who submitted bids. Within seven business days after a bid is accepted, the distributor shall notify in writing each exhibitor who submitted a bid of the terms of the accepted bid and the name of the winning bidder. Bids shall be kept on file at the local exchange for a period of sixty days after acceptance, and may be examined by any competitive exhibitor during that period during the regular business hours of the local exchange.

(4) Once bids are solicited for a particular run, the distributor may subsequently license the picture only by bidding for that run and shall solicit rebids if he does not accept any of the submitted bids.

WV Legislature

§47-11E-1. Definitions.

As used in this article:

“Contract” means a written agreement between a physician and an employer.

“Covenant not to compete” means any contract that restricts the right of a physician to practice medicine in any geographic area of the state for any period of time following the expiration of the physician’s contract with his or her employer, or upon the termination of the physician’s contract by the physician’s employer.

“Employer” means any person employing at least one individual in the state or any agent of an employer employing at least one individual in the state.

“Person” means any individual, proprietorship, partnership, firm, association, corporation, labor organization, limited liability corporation or any other legal entity.

“Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed to practice medicine and surgery pursuant to the provisions of either article three or fourteen, chapter thirty of this code.

WV Legislature

§47-11E-2. Limitation on contractual provisions in physician employment contract.

(a) A covenant not to compete contained in a contract between a physician and an employer shall be limited to not more than:

(1) One year in duration; and

(2) Thirty road miles from the physician's primary place of practice with the employer.

(b) A covenant not to compete shall be void and unenforceable upon the termination of the physician's employment by the employer.

WV Legislature

§47-11E-3. Enforceability of other provisions.

Provided that the contract does not state otherwise, nothing in this article limits the enforceability of:

(1) Provisions prohibiting a physician from taking any property, patient lists or records of the employer with him or her upon the termination or expiration of the contract;

(2) Provisions requiring a physician to repay an employer all or a portion of:

(A) A loan;

(B) Relocation expenses;

(C) A signing bonus;

(D) Remuneration to induce the physician to relocate or establish a physician practice in a specific geographic area; or

(E) Recruiting, education and training expenses;

(3) A nondisclosure provision relating to confidential information and trade secrets;

(4) A nonsolicitation provision with respect to patients and employees of the employer;

(5) A provision for liquidated damages; or

(6) Any other provision of a contract that is not in violation of law.

WV Legislature

§47-11E-4. Exemptions to limitations.

The limitations set forth in this article do not apply to any of the following unless the contract terms provide otherwise:

(1) In the case where the physician has sold his or her business or practice in the form of a sale of assets, stock, membership interests or otherwise to his or her employer; or

(2) To contracts between physicians who are shareholders, owners, partners, members or directors of a health care practice.

WV Legislature

§47-11E-5. Applicability.

This article applies to any contract between a physician and his or her employer entered into, modified, renewed or extended on or after July 1, 2017: Provided, That the provisions of this article do not otherwise apply to or abrogate any contract in effect on or before June 30, 2017.

WV Legislature

§47-11E-6.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-7.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-8.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-9.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-10.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-11.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11E-12.

Repealed.

Acts, 1986 1st Ex. Sess., Ch. 21.

WV Legislature

§47-11F-1. Short title.

This article shall be known and may be cited as the "West Virginia Farm Equipment Dealer Contract Act."

WV Legislature

§47-11F-2. Definitions.

(a) As used in this article, unless the context in which used clearly requires otherwise:

(1) "Agreement" or "contract" means a written or oral agreement or contract between a dealer and a supplier, by the terms of which the dealer is granted the right to sell the supplier's equipment and the dealer is required to order and maintain inventory from such supplier in excess of $10,000 at current net price.

(2) "Current net price" means the price listed in the supplier's price list in effect at the time an agreement is terminated, less any applicable discount allowed.

(3) "Dealer" means any person, firm, partnership, association, corporation or other business entity engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing and who maintains a total inventory of new equipment and repair parts having an aggregate value of not less than $25,000 at current net price and who provides repair service for such equipment.

(4) "Inventory" means the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier, including, but not limited to, any data processing hardware and software, special service tools, and business signs the supplier has required the dealer to purchase and maintain.

(5) "Net cost" means the price paid by the dealer to the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location and the reasonable cost of assembly incurred or performed by the dealer.

(6) "Supplier" means a wholesaler, manufacturer or distributor who enters into an agreement with a dealer and who supplies inventory to such dealer.

(7) "Termination" means the termination, cancellation, nonrenewal or discontinuation of an agreement.

(b) The terms "farm," "construction," "industrial" or "outdoor power," when used to refer to tractors, implements, attachments or repair parts shall have the meaning commonly used and understood among dealers and suppliers subject to this article.

WV Legislature

§47-11F-3. Notice of termination of agreement or contract.

(a) The provisions of any agreement to the contrary notwithstanding, a supplier who terminates a contract or agreement with a dealer shall notify such dealer of the termination not less than six months prior to the effective date thereof: Provided, That the supplier may terminate the agreement at anytime after the occurrence of any of the following described events:

(1) The filing of a petition for bankruptcy or for receivership filed either by or against the dealer;

(2) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier;

(3) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;

(4) The close out or sale or discontinuance of all or at least fifty percent of the dealer's business related to the handling of goods or products of the supplier;

(5) If the dealer is a partnership or corporation, the commencement of dissolution or liquidation, whether voluntary or involuntary of such dealer;

(6) A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;

(7) The withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written approval of the supplier. If the dealership is operated from more than one location, the involuntary termination of a manager at one or more branch locations without the prior written approval of the supplier shall not be grounds for termination of the dealership by the supplier;

(8) The revocation or discontinuance by a guarantor or of any guarantee of the dealer's present or future obligations to the supplier.

(b) The provisions of any agreement to the contrary notwithstanding, a dealer who terminates an agreement or contract with a supplier shall notify such supplier of the termination not less than six months prior to the effective date thereof.

(c) Any agreement or contract may also be terminated by the written mutual consent of the parties; and the effective date of such termination may be such as is mutually agreed upon by the parties.

(d) Notification under this section shall be in writing and shall be given by certified mail, return receipt requested, or by personal delivery to the recipient and the receipt thereof

WV Legislature

acknowledged in writing by such recipient. Any such notice of termination shall contain (i) a statement of intention to terminate the agreement; (ii) a statement of the reasons for such termination; and (iii) the date on which the termination is to take effect.

WV Legislature

§47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.

(a) The provisions of any agreement to the contrary notwithstanding, whenever an agreement or contract between a dealer and a supplier is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this article unless the dealer chooses to keep the inventory and so advises the supplier in writing.

(b) The supplier's obligation to repurchase the dealer's inventory shall apply to any successor in interest or assignee of that supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original supplier.

(c) If the dealer dies or becomes incompetent, the supplier shall, at the option of the heir, repurchase the inventory to the same extent as if the agreement had been terminated. The heir has one year from the date of the death of the dealer or from the date such dealer is determined to be incompetent to exercise the options of the dealer under this article.

(d) The supplier shall repurchase from the dealer within ninety days from the date of termination of the agreement or contract all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement or contract, including, but not limited to, all data processing hardware and software, special services tools, and business signs that the supplier required the dealer to purchase.

(e) The supplier shall pay the dealer:

(1) One hundred percent of the net cost of all new, unused, undamaged and complete inventory, except repair parts, special service tools, business signs and data processing equipment, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location; and

(2) Ninety percent of the current net price of all new, unused, and undamaged repair parts that are currently listed in the supplier's price book as of the effective date of such termination; and

(3) Seventy-five percent of the net cost of all undamaged special service tools and business signs in the possession of the dealer which are currently available; and

(4) Net cost less twenty percent per year depreciation of all data processing hardware and software that the supplier required the dealer to purchase or the supplier shall assume all data processing hardware and software lease responsibilities of the dealer if the supplier required the dealer to lease the data processing hardware and software from a specific supplier of such hardware and/or software.

(f) The inventory shall be returned F.O.B. (which means "free on board") to the dealership and the dealer shall bear the expenses and risk of putting them into the possession of the

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carrier. The supplier may perform the handling, packing, and loading of repair parts returned and withhold, as a charge for these services, five percent of the current net price of the returned repair parts. The dealer and the supplier may each furnish a representative to inspect all inventory and certify as to its acceptability before being returned.

(g) The supplier shall pay the full repurchase amount as required by subsection (d) of this section not later than ninety days after receipt of the inventory by the supplier.

WV Legislature

§47-11F-5. Exceptions to repurchase requirement.

Any other provisions of this article to the contrary notwithstanding, a supplier shall not be required to repurchase from the dealer (i) a repair part of or with a limited storage life or which is otherwise subject to deterioration; that is to say by way of example and not in limitation thereof, such items as gaskets or batteries; (ii) multiple packaged repair parts when the package has been broken; (iii) a repair part that because of its condition is not resalable as a new part without repackaging or reconditioning; (iv) any portion of the inventory that the dealer chooses to retain; or (v) any inventory that was acquired by the dealer from a source other than the supplier, except for data processing hardware and software, special service tools, and business signs that the supplier required the dealer to purchase; and (vi) any tractor, implement, attachment or equipment that the dealer purchased from the supplier more than thirty-six months before the date of the termination notice.

WV Legislature

§47-11F-6. Applicability of uniform commercial practices.

(a) The provisions of this article do not affect a security interest of the supplier in the inventory of the dealer.

(b) A repurchase of inventory pursuant to this article shall not be subject to the bulk transfer provisions of article six, chapter forty-six of this code.

WV Legislature

§47-11F-7. Warranty claims.

If after the termination of a contract or agreement, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination of such contract or agreement, the supplier shall accept or reject such claim within a minimum of forty-five days from the day the supplier received the warranty claim. A warranty claim not rejected before the expiration of such forty-five-day period shall be deemed to be accepted by the supplier. In the event a warranty claim is accepted by the supplier as prescribed in this section, such claim shall be paid by such supplier not later than sixty days from the date the supplier received the claim.

WV Legislature

§47-11F-8. Civil remedies applicable.

(a) The provisions of any agreement to the contrary notwithstanding, if a supplier fails or refuses without just cause to repurchase any inventory or portion thereof when required to do so under the provisions of this article within the time periods prescribed thereby, such supplier shall be civilly liable for: (1) 100 percent of the current net price of the inventory or portion thereof not repurchased; (2) the amount the dealer paid for freight costs from the supplier's location to the dealer's location; (3) the reasonable cost of assembly performed by the dealer; (4) reasonable attorney's fees and court costs incurred by the dealer in requiring the supplier to comply with this article of the code; and (5) interest on the current net price of the inventory or portion thereof not repurchased, computed at the prime rate of interest commencing the 91st day after termination of the contract agreement, and recomputed quarterly thereafter.

(b) Any person who suffers monetary loss due to a violation of this article or because he or she refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this article, may bring civil action to enjoin further violation and to recover damages sustained by him or her together with the costs of the suit, including reasonable attorney's fees and court costs.

(c) If there is a failure to provide the required notice of termination or otherwise comply with provisions of this article, the supplier shall be civilly liable for the dealer's loss of business for the time period the supplier is in violation of the notice of termination provisions of the article, plus reasonable attorney's fees and court costs.

(d) The provisions of this section are in addition to all legal or equitable remedies available at law, as well as any remedies available pursuant to any agreement between the supplier and dealer.

(e) A civil action commenced under the provisions of this article may be brought until the expiration of five years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

(f) Subsection (e) of this section applies if a supplier fails or refuses to repurchase a self-propelled vehicle designed for farm use, which is the subject of the contract, with a horse power unit of 20 or greater, and which vehicle is defined in §46A-6A-2 of this code as a "motor vehicle" for purposes the Consumer Protection – New Motor Vehicle Warranties, that has an issue which is not corrected after being returned to the supplier three times.

WV Legislature

§47-12-1.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-2.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-3.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-4.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-5.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-6.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-7.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-8.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-9.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-10.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-11.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-12.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-13.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-14.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-15.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-16.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-17.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-18.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-19.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-20.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-21.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-22.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-23.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-12-24.

Repealed.

Acts, 2002 Reg. Sess., Ch. 245.

WV Legislature

§47-13-1.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-2.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-3.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-4.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-5.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-6.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-7.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-8.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-9.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-10.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-11.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-12.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-13.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-14.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-13-15.

Repealed.

Acts, 1967 Reg. Sess., Ch. 167.

WV Legislature

§47-14-1. Declaration of policy; legislative intent.

It is contrary to public policy for any person to receive, hold, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for the same are made either outright or on an installment basis, prior to the death of the person or persons so purchasing them, or for whom they are purchased, unless that person holds, controls or manages those funds subject pursuant to the limitations prescribed by this article and the legislative rules promulgated pursuant thereto.

It is the legislative intent that the provisions of this article shall be construed as a limitation upon the manner in which a person is permitted to accept funds in prepayment of funeral services to be performed in the future, or funeral or burial goods to be used in connection with the funeral or final disposition of human remains, so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent that no person may offer, sell or negotiate for the sale of a preneed funeral contract through anyone who is not licensed pursuant to the provisions of this article.

WV Legislature

§47-14-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Burial goods" means all merchandise supplied in regard to burial, or entombment in a mausoleum or inurnment in a columbarium, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interests therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(2) "Contract beneficiary" means any person specified or implied in a preneed funeral contract, upon whose death funeral services, funeral goods or burial goods are to be performed, provided or delivered.

(3) "Contract buyer" means any person, whether or not a contract beneficiary, who purchases goods or services pursuant to a preneed funeral contract but does not include any person other than a natural person.

(4) "Contract seller" or "seller" means a person, his agent or his employee who sells, makes available or provides preneed funeral contracts.

(5) "Division" means the consumer protection division of the office of the Attorney General.

(6) "Funds" means moneys or other consideration, other than premiums for insurance policies or annuities paid to a life insurance company, received pursuant to the sale of a preneed funeral contract, including interest accrued or earned thereon.

(7) "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by the cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a licensed funeral establishment or director including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in this state who is engaged in the selling of, making available of or providing of preneed funeral contracts, as defined herein, or who is the recipient of funds paid for such purpose.

WV Legislature

(10) "Person who makes a preneed funeral contract available" means a person who, while not directly selling the contents of a preneed funeral contract to the public through his efforts, makes such contracts available to the public, but does not include manufacturers of funeral goods or burial goods.

(11) "Personal residence" means any residential building in which one temporarily or permanently maintains his abode including, but not limited to, hotels, motels, apartments, nursing homes, convalescent homes, homes for the aged and public and private institutions.

(12) "Preneed funeral contract" means any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, including a contract that is financed by the purchase of an insurance policy or annuity, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary who is either named or implied therein.

(13) "Provider" means a person who, though not necessarily a party to a preneed funeral contract, makes the services or goods referred to in such a contract available to the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, savings and loan association or credit union, which receives money pursuant to any agreement or contract made pursuant to the provisions of this article. The term "trustee" does not include an insurance company licensed pursuant to chapter thirty-three of this code.

WV Legislature

§47-14-3. Certificate of authority required; fees to go to division; special account established; duties of certificate holder.

(a) No person may receive, hold, control or manage any funds or other thing of value tendered as payment on any preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this state or insured by an agency of the United States federal government or life insurance companies licensed pursuant to the provisions of chapter thirty-three of this code is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division.

(c) Any person desiring to obtain a certificate of authority shall file with the division, upon forms provided by the division, a completed application, together with a $200 application fee for the original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" to be used for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the division may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to negotiate preneed funeral contracts and, in the case of a funeral service provider, to provide the funeral services, funeral goods or burial goods as specified therein; and

(4) The types of preneed funeral contracts proposed to be written or otherwise used and copies of any writings used pursuant thereto; and if a person is a party to or bound by any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be $200 per each entity, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

(e) Each certificate of authority holder shall file with the division a biennial report which shall contain the following:

WV Legislature

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered into by the parties, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the contract beneficiary, the amount paid and interest earned on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The date on which any insurance policy or annuity was purchased to fund a preneed funeral contract, the amount paid for each such insurance policy or annuity and the present value of each such insurance policy or annuity.

(3) The name of the contract seller and the name of the provider of the services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(4) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust requirements of this article, and the name and address of the present depository or holder of such funds and a statement of all the amounts thereof itemized as to each such contract.

(5) Any changes or amendments in any contracts or obligations of the seller and provider which have occurred since the date of the last report.

(6) Such other information as may be considered necessary by the division in order to meet its responsibilities under this article.

Any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public or who otherwise holds or performs such contracts with or without a certificate of authority is required to file a biennial report with the division as prescribed in this subsection. Beginning with the year one thousand nine hundred ninety-five, the reporting period for which a biennial report is to be made pursuant to this section shall be a calendar year ending on December 31, every other year. All such reports shall be filed with the division no later than the thirty-first day of March of the year following the reporting period.

(f) Beginning with the calendar year one thousand nine hundred ninety-five, the certificate of authority shall expire on June 30 following its issuance: Provided, That a temporary certificate of authority may be issued by the division for a period not to exceed six months for purposes of implementing the change in the certificate of authority reporting period for the year one thousand nine hundred ninety-five. The fee for such temporary certificate shall be $100.

(g) Every application, request for renewal and statement filed with the division shall be sworn to by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn to by each member thereof. If the certificate holder is a corporation, it shall

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be sworn to by the president and secretary thereof.

(h) Upon the satisfaction of the division, based upon the application statements and any other information that the applicant meets the requirements of this article and of the rules promulgated by the division and, if upon investigation by the division of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the division shall issue the certificate of authority or renewal thereof.

(i) (1) The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, the name of the contract beneficiary of each contract, the name of the trustee holding trust funds received under each contract and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the division for examination. The division may not more frequently than once in any calendar year, unless pursuant to an order of court for good cause shown, during ordinary business hours, cause to be examined the books, records and accounts of the certificate holder with respect to funds received by said certificate holder and for that purpose may require the attendance of and examine, under oath, all persons whose testimony the division may require.

(3) The certificate holder shall pay for the cost of any examination which is not the first one in that calendar year, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept and all other expenses necessarily incurred in the examination. The division shall assess and collect a fee for each such examination, based on the certificate holder's total outstanding preneed funeral service contracts and the cost of such examination, but the cost to the person being audited shall not be more than a total cost of $500 for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section.

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§47-14-4. Agents and employees; licenses required; fee to go to division.

No agent or employee of a contract seller may sell preneed funeral contracts in this state without having first obtained a license from the division. The fee for such license and the annual renewal thereof is $25. These fees shall be payable to the "Preneed Burial Contract Regulation Fund" established by section three of this article. The division shall not issue such license without requiring an applicant for the license, or if the applicant is a corporation, its individual agents, to provide proof to warrant its issuance by presenting with the application affidavits from his employer stating that, to the employer's best information, knowledge and belief, the applicant merits a license. The acts of the agent shall be considered acts of the employer. The division may require the applicant to pass a written examination to ascertain if the applicant has sufficient knowledge of the industry and the provisions of this article to properly engage in the business governed by the provisions of this article.

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§47-14-5. Disposition of proceeds; trusts; procedure for administration; division to promulgate rules.

(a) All sums paid or collected on such preneed funeral contracts entered into after June 7, 1983, shall be handled in the following manner:

(1) The contract seller or other person collecting the funds may retain for his own use and benefit and for the purpose of covering selling expenses, servicing costs and general overhead, an amount not to exceed ten percent of the total original amount agreed to be paid by the contract buyer as reflected in the original preneed funeral contract. Upon retaining such amount, no further deduction from any sums collected pursuant to the contract for such purposes shall be made by any such seller or person or their assignees or transferees. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;

(2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision (1) of this subsection, shall be deposited under the provisions of subdivision (3) of this subsection;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person as the result of a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state: (i) In the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state; or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state. In the event a preneed funeral contract is funded by the purchase of an insurance policy or an annuity, the premiums paid on such insurance policy or annuity shall be deposited with an insurer licensed pursuant to the provisions of chapter thirty-three of this code.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder be placed in a common or commingled trust fund in this state under a single trust instrument.

(c) All deposits, other than for insurance policies or annuities, shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract, to whom the contract buyer makes payment. Each trustee shall maintain records showing the trust's investment and, as to each contract showing the amount paid, the amount of interest earned and the current balance with respect to any particular buyer's contract.

(d) All funds required to be deposited and covered by this article shall remain in this state.

(e) All accounts of money deposited in any bank, savings institution, building and loan

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association or credit union in accordance with the provisions of this article are subject to periodic examination by the Division of Banking of this state.

(f) The division shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of administering the provisions of this article.

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§47-14-6. Withdrawal of funds.

(a) Disbursements of funds discharging any preneed funeral contract shall be made by the trustee to the person named in the contract upon receipt of a certified photostatic copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral contract has been fully performed. In the event that, after the death of the contract beneficiary, the contract services or goods are not desired by the heirs or by the personal representative of the contract beneficiary, the party obligated to provide the funeral services, funeral goods or burial goods under the contract shall have authority to provide such services or goods despite the desires to the contrary expressed by such heirs or personal representative. If the service and goods are not provided upon the death of the contract beneficiary because of actions of the seller, provider or person making the preneed funeral contract available, then all of the funds held on deposit shall in ten days be refunded to the contract buyer or his legal representative who also has available any other remedy set forth in this article.

(b) Any contract buyer or legally authorized person, acting in his behalf, may cancel a preneed funeral contract prior to the death of the contract beneficiary by notifying in writing the contract seller or present obligor of the provisions thereof, if a different person, of such desire to cancel. The seller or obligor shall, in ten days after receipt of such notice, notify the trustee of such cancellation and the trustee shall within thirty days after receipt of written notification pay to the contract buyer, or his legal representative all funds placed in the trust account and paid on the contract.

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.

(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

(e) Payment by any depository or any trustee made in good faith pursuant to the terms of this section shall forever relieve such depository or trustee, as such, for any further liability for such funds under the contract and in law.

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§47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund as permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit, except as otherwise provided herein, shall accrue to the credit of the individual account of such contract until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.

(b) Upon the death of such contract beneficiary, the total amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost: Provided, That to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the heirs or personal representative of the contract beneficiary;

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the legislative rules promulgated by the division.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract, disbursing the trust proceeds as provided in this article and paying costs incidental to the trust, including, but not limited to, reasonable trust fees and tax assessments.

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§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the preneed funeral contract available may not enforce a preneed funeral contract made in violation of this article, but a contract buyer or his heirs or legal representative may recover all amounts paid under his contract and all accrued income on such amount where the contract seller, provider or person making the preneed funeral contract available has violated the provisions of this article as to such contract. The right of such recovery is in addition to the remedy provided for in section twelve of this article.

(b) A contract seller, provider or person making the preneed funeral contract available may appoint a board of at least three individual trustees under a trust instrument, if the trustee is other than a chartered state or national bank or trust company under the supervision of the Division of Banking of this state, to serve as trustees of its trust funds. Each individual trustee shall be a resident of this state and shall hold office subject to the direction of the seller. Not more than one member of the board of trustees of a trust fund may have a proprietary interest in the seller appointing trustees or in any certificate of authority holder who is placing funds in such trust.

Individual trustees of a trust fund established under the provisions of this article shall file a fidelity bond with a corporate surety thereon which is licensed to do business in this state with the division in an amount equal to the funds in trust, guaranteeing payment of damages occasioned by breach of the trustees' fiduciary duties. The trustees of one or more trust funds need file only one such bond. The aggregate liability of the surety shall in no case exceed the face amount of the bond. The division or any aggrieved person claiming against any bond required by this section may maintain an action against the trustee and the surety. Individual trustees shall take no action respecting trust funds unless there is on file with the division a bond as required by this section. If the trustees are individuals, the division may suspend the certificate of authority of any contract seller, provider or person making the preneed funeral contract available having trust funds with respect to which there is no bond on file with the division as required by this section.

(c) All trustees subject to the provisions of this article shall comply with the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, trustees have the responsibilities which customarily attach to such offices and to the type of estates entrusted to their care and shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(d) No preneed funeral contract may restrict any contract buyer who may make his or her

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contract irrevocable in accordance with the laws and regulations of this state. Irrevocable preneed contracts may be transferred pursuant to the provisions of this section.

(e) All preneed funeral contracts must be in writing and no contract form may be used without prior approval of the division.

(f) Each contract buyer shall pay a contract recording fee of $5 to the contract seller. Beginning on July 1, one 1995, the contract buyer shall pay a fee of $10 to the contract seller. Beginning on January 1, 1996, the contract buyer shall pay a fee of$15 to the contract seller. Beginning on January 1, 1997, the contract buyer shall pay a fee of$20 to the contract seller. The contract seller is to forward such sum and a copy of the contract to the division within ten days after its execution. The division shall record the contract. Within ten days after receiving the fee, the division will notify the contract buyer, by mail, of the recording. Forty percent of the contract recording fees fee shall be placed by the division in an account under the division's control entitled "Preneed Guarantee Fund", and the income thereon shall accrue to the fund. The division may use such income, if necessary in its discretion, to enforce this article. For fiscal years beginning after June 30, 1996, no expenditures or disbursements may be made from the "Preneed Burial Contract Regulation Fund" and the "Preneed Guarantee Fund" created in this article except by appropriation by the Legislature. The remaining sixty percent of the contract recording fee shall be placed by the division in the "Preneed Burial Contract Regulation Fund" as provided in section three of this article.

In the event any contract buyer of any preneed funeral contract is unable to receive the benefits of the contract, or to receive the funds due by reason of his cancellation thereof, such buyer may apply therefor to the division on a form supplied by the division. Upon the finding of the division that said benefits or return of payment is not available to the buyer, the division will cause to be paid to the said buyer from the "Preneed Guarantee Fund" the amount actually paid by the buyer under the contract to the extent funds are available in the "Preneed Guarantee Fund". In the event multiple claims are made and there are insufficient funds in the "Preneed Guarantee Fund" to satisfy all claims in full, payments from the "Preneed Guarantee Fund" shall be made on a pro rata basis. If the seller's liability for default is subsequently proven, any judgment resulting therefrom shall, to the extent that it is for amounts paid from the "Preneed Guarantee Fund", be ordered payable to the "Preneed Guarantee Fund".

(g) Notwithstanding any other provision of this article to the contrary, delivery of funeral or burial goods prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series of contracts.

(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral contract available to other persons within or without this state. The funds on deposit for the contract and any future payments, if any, by the contract buyer shall then be transferred and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state

where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, from further liability under such contract.

Nothing in this article or in any preneed funeral contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifically provided herein and except that if the assignee is a resident of this state or the contract is to be fulfilled by the assignee in this state, the assignee must hold a certificate of authority under this article. If the contract is to be fulfilled in another state, the assignee must in all respects be in compliance with the preneed funeral law of that state, if any.

(i) Notwithstanding any other law of this state, a contract seller, provider or person making the preneed funeral contract available may, if requested by the contract buyer where the contract is to be paid in installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of the total cost of the insurance.

(j) In the event any certificate of authority holder or anyone in violation of this article who has outstanding preneed funeral contracts and is not the current holder of a certificate of authority sells its business, through the sale of assets or stock, which is involved in the fulfillment of obligations under preneed funeral contracts, the buyer of such business is a "successor in interest" and is covered not only by this article but shall assume the obligations of seller under seller's outstanding preneed funeral contracts regardless of whether seller made known to buyer the existence of such contract or contracts.

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§47-14-9. Forms and rules.

The administration and enforcement of the provisions of this article are vested in the division. The division shall prepare and furnish all forms necessary under this article, including forms for applications for certificates of authority, for renewals thereof, for annual statements, for other required reports and for preneed funeral contracts. The division shall promulgate, in accordance with the provisions of chapter twenty-nine-a of this code, legislative rules as may be necessary to effectuate the purpose of this article.

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§47-14-10. Solicitation.

(a) Any contract seller or agent or employee or person acting in behalf of any such person may not:

(1) Directly or indirectly call upon individuals or persons in hospitals, rest homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(2) Directly or indirectly employ any agent, assistant, employee, independent contracting person or any other person to call upon individuals or persons in hospitals, rest homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial or funeral goods for such person;

(4) Solicit or accept or pay any consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons or the services of a specific crematory, mausoleum or cemetery except where such arrangement is the subject of a preneed funeral contract;

(5) Solicit by telephone call or by visit to a personal residence, unless such solicitation has been previously requested by the person solicited or by a family member residing at such residence.

(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(c) Nothing herein shall be construed to prohibit general advertising.

(d) Anyone making a personal or written solicitation for a preneed funeral contract shall, at the very first instance, divulge the real reason for the contract or solicitation.

(e) The division may promulgate legislative rules regulating the solicitation of preneed contracts by certificate holders or registrants to protect the public from solicitation practices which utilize undue influence or which take undue advantage of a person's ignorance or emotional vulnerability.

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§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.

(a) No person shall:

(1) Violate any provisions of this article;

(2) Attempt to procure or procure a certificate of authority or license under this article by bribery or fraudulent misrepresentation;

(3) Have had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

(4) Have been convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

(5) Make or file a report required by this article which the certificate holder knows to be false or knowingly fail to make or file a report required by this article;

(6) Advertise goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

(7) Engage in fraud, deceit or misrepresentation in the conduct of business governed by the provisions of this article;

(8) Fail to comply with a lawful order of the division;

(9) Knowingly make any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;

(10) Fail to maintain the funds received under the contracts as required by this article;

(11) Fail to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Fail to renew or qualify for renewal of its certificate of authority or license;

(13) Fail to produce records in connection with the certificate holder's business or otherwise fail to comply with the provisions of this article or any rule promulgated by the division pursuant to this article; or

(14) Solicit by the certificate holder, its agents, employees or representatives through the use of fraud, undue influence, misrepresentation or overreaching or other forms of vexatious conduct as defined by law, this article or the legislative rules promulgated by the division.

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(b) Upon the violation of any of the provisions of this article, determined in an administrative hearing after notice and an opportunity to be heard, the division may institute revocation proceedings regarding a license to operate a funeral establishment or a certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate of authority or license, or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate should not be revoked or the person should not be enjoined from engaging in business governed by the provisions of this article.

(1) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining the defendant from transacting further business until further order of the court.

(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the division, the court shall dismiss such complaint. If the court finds that the charges of the division are supported by the evidence, it may enter an order directing the revocation of a license to operate a funeral home or of a certificate of authority or license to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority or license, or permanently enjoining the person from engaging in business governed by the provisions of this article until its requirements are met. The court shall have the authority to order the liquidation of the business upon a finding that the person engaged therein is in violation of any provision of this article.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors for the filing of claims and otherwise direct all other matters necessary and essential to govern an estate in receivership.

(c) When the division finds that any person has violated the provisions of subsection (a) of this section after an administrative hearing or finds that any funeral services or funeral or burial goods are offered for sale when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed $1,000 for each county where there are separate violations;

(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and

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subject to such conditions as the division may specify.

(d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article. Such priority constitutes a statutory lien at the time the contract was executed to the extent payments on the contract were made and interest has accrued.

(e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.

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§47-14-12. Civil action; attorney's fees.

(a) The failure of a certificate holder, a licensee or of any other person engaged in the sale of preneed funeral contracts without a certificate of authority or license required pursuant to the provisions of this article to comply with the provisions of this article gives rise to a civil cause of action in favor of the division, any aggrieved consumer, contract guarantor or contract purchaser. Upon entry of a judgment for damages in favor of the plaintiff, the trial court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(b) The prevailing party, after judgment in trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(c) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings and appeals to the trial judge who presided over the civil case.

(d) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(e) Any award of attorney's fees or costs shall become part of the judgment and subject to execution as the law allows.

(f) The division shall deposit any penalties or attorney's fees recovered by the division in the "Preneed Burial Contract Regulation Fund" for the purpose of administering and enforcing the provisions of this article.

WV Legislature

§47-14-13. Penalty.

(a) Any person who willfully and knowingly conceals or embezzles any funds paid as the result of a preneed funeral contract is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of not less than three years and fined not more than 10,000.

(b) Except as provided by subsection (a) of this section, any person who violates any provision of this article or the legislative rules promulgated hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $500 nor more than $5,000 for each occurrence, or confined in jail for a term not to exceed one year, or both fined and confined.

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§47-14-14. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or otherwise invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

WV Legislature

§47-15-1. Definitions.

(a) "Pyramid promotional scheme" shall mean the organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of any members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members.

(b) "Promote" or "promotion" shall mean the initiation, preparation, operation, advertisement, or the recruitment of any person or persons in the furtherance of any pyramid promotional scheme as defined in subsection (a) of this section.

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§47-15-2. Unlawful act.

No person shall promote any pyramid promotional scheme, either personally or through an agent or agents.

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§47-15-3. Contracts void and unenforceable.

All contracts and agreements entered into after the effective date of this article wherein the whole or any part of the consideration of such contract or agreement is given in exchange for the right to participate in any pyramid promotional scheme are hereby declared to be against public policy and are hereby declared to be void and unenforceable.

WV Legislature

§47-15-4. Restraining prohibited acts.

The prosecuting attorney of any county or the Attorney General, or any person, may petition the circuit court to enjoin the continued operation of any pyramid promotional scheme as defined in this article. The procedure in any such suit shall be the same as the procedure in other suits for equitable relief, except that no bond shall be required upon the granting of either a temporary or permanent injunction therein, when such proceedings are initiated by a prosecuting attorney of any county or the Attorney General.

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§47-15-5. Criminal penalties.

Any person who shall violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred nor more than $1,000, or confined in jail for a period not to exceed six months, or both.

WV Legislature

§47-15-6. Severability.

If any provision of this article is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the Constitutionality of the remainder of the article and the applicability thereof to other persons and circumstances shall not be affected thereby.

WV Legislature

§47-16-1. Citation of article.

This article may be cited as the "Collection Agency Act of 1973."

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§47-16-2. Definitions.

The following words and terms as used in this article shall be construed as follows:

(a) "Claim" means any obligation for the payment of money due or asserted to be due to another person, firm, corporation or association.

(b) "Collection agency" means and includes all persons, firms, corporations and associations: (1) Directly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness originally due or asserted to be owed or due another and all persons, firms, corporations and associations directly or indirectly engaged in asserting, enforcing or prosecuting those claims; (2) which, in attempting to collect or in collecting his or her or its own accounts or claims uses a fictitious name or names other than his or her or its own name; (3) which attempts to or does give away or sell to others any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate directly or indirectly that the claims or accounts are being asserted or collected by any person, firm, corporation or association other than the creditor or owner of the claim or account; or (4) directly or indirectly engaged in the business of soliciting, or who holds himself or herself out as engaged in the business of soliciting, debts of any kind owed or due, or asserted to be owed or due, to any solicited person, firm, corporation or association for fee, commission or other compensation.

The term "collection agency" shall not mean or include: (1) Regular employees of a single creditor or of a collection agency licensed hereunder; (2) banks; (3) trust companies; (4) savings and loan associations; (5) building and loan associations; (6) industrial loan companies; (7) small loan companies; (8) abstract companies doing an escrow business; (9) duly licensed real estate brokers or agents when the claims or accounts being handled by such broker or agent are related to or in connection with such brokers' or agents' regular real estate business; (10) express and telegraph companies subject to public regulation and supervision; (11) attorneys-at-law handling claims and collections in their own names and not operating a collection agency under the management of a layman; (12) any person, firm, corporation or association acting under the order of any court of competent jurisdiction; or (13) any person collecting a debt owed to another person only where: (A) Both persons are related by wholly-owned, common ownership or affiliated by wholly-owned corporate control; (B) the person collecting the debt acts only on behalf of persons related as described in paragraph (A) of this subdivision; and (C) debt collection is not the principal business of the person collecting the debt.

(c) "Commissioner" means the State Tax Commissioner or his or her agent.

(d) "Customer" means any person, firm, corporation or association who has filed, assigned or sold any claim or chose in action with or to a collection agency for collection.

(e) "Licensee" means any person holding a business franchise registration certificate under section two, article twelve, chapter eleven of this code and under the provisions of this

WV Legislature

article.

(f) "Trust account" means a special account established by a collection agency with a banking institution in this state, wherein funds collected on behalf of a customer shall be deposited.

WV Legislature

§47-16-3. Scope.

No person, firm, corporation or association shall establish or conduct within this state a collection agency except as authorized by this article.

WV Legislature

§47-16-4. Requirements for conduct of agency.

(a) License. -- No person, firm, corporation or association shall conduct within this state a collection agency without having first applied for and obtained a business franchise registration certificate pursuant to section two, article twelve, chapter eleven of this code, nor shall any person, firm, corporation or association establish or operate a collection agency or the business of a collection agency, unless such person, firm, corporation or association maintains an office within the State of West Virginia. The business franchise registration certificate shall be deemed the collection agency's license. A license is required for each collection agency, including each principal office and all branch offices thereof.

(b) Bond. -- Each applicant shall file with the commissioner a continuing surety bond executed by a corporation which is licensed to transact the business of fidelity and surety insurance in the State of West Virginia to run concurrently with the registration tax period, which bond must be filed with, and approved by, said commissioner before the license herein provided may be issued. A separate bond shall be filed for each collection agency including each principal office and all branch offices thereof. Each bond shall be in the amount of $5,000 payable to the State of West Virginia, and conditioned that any such person will pay all damages to the state or a private person resulting from any unlawful act or action by such person or his or its agent in connection with the conduct of the business of the collection agency. This continuing bond shall be filed with the Tax Commissioner.

An action may be brought in any court of competent jurisdiction upon the bond by any person to whom the licensee fails to account and pay as set forth in such bond. The aggregate liability of the surety for all breaches of the condition of the bond shall not exceed the sum of such bond.

Upon entering judgment for the prevailing party in any action on the bond required by this article, the court shall include in the judgment, reasonable compensation for the services of such party's attorney in the action.

The license of any licensee shall be void upon termination of the bond of the surety company, unless, prior to such termination, a new bond has been filed with the commissioner.

Should the license of any surety company to transact business in this state be terminated, all bonds given pursuant to this article upon which such company is surety shall thereupon be suspended, and the commissioner shall immediately notify each affected licensee of such suspension and require that a new bond be filed. This notice shall be by registered or certified mail, return receipt requested, and shall be addressed to the licensee at his or its principal place of business as shown by the commissioner's records. The failure of any licensee to file a bond with new or additional surety within thirty days after being advised in writing by the commissioner of the necessity to do so shall be cause for the commissioner to revoke the license.

(c) Record Keeping. -- Each collection agency licensed to operate in this state shall keep a

record of all sums collected by such agency and of all disbursements made by such agency, and shall maintain or make available all such records and all records as to customers' funds at such agency's principal place of business within this state. Each collection agency shall maintain records of collections for and payments to customers for a period of six years from the date of last entry therein.

No collection agency, nor any employee thereof, shall intentionally make a false entry in any such collection agency record nor intentionally mutilate, destroy or otherwise dispose of any such record within the time limits provided in this section. Such records shall at all times be open for inspection by the commissioner, or his duly appointed representative.

No licensee shall commingle the money of collection agency customers with other moneys, but shall maintain a separate trust account in a bank for customers' funds.

Each collection agency shall, within a period of thirty days after the close of each and every calendar month, pay to such agency's customers the net proceeds due on all collections made during the preceding calendar month. When the net proceeds due the customer are less than $5 at the end of any calendar month, the collection agency may defer for a period not to exceed ninety days the payment of said proceeds, if monthly statements are mailed or delivered to the customer.

WV Legislature

§47-16-5. Penalty; civil liability.

(a) Any person, firm, corporation or association violating any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000.

(b) Any person, firm, corporation or association violating any of the provisions of this article shall, in addition to any civil liability arising by virtue of such violation, also be civilly liable as otherwise provided by law.

WV Legislature

§47-17-1. Contracts for the payment of manufactures' excise taxes.

(a) If a contract requires one party to reimburse another party for taxes levied under Part III of Subchapter A of Chapter 32 of the federal Internal Revenue Code, the party making the reimbursement, at its option, shall not be required to reimburse the other party more than one business day before the other party is required to remit the taxes to the Internal Revenue Service.

(b) If a party chooses to exercise its option under subsection (a) of this section, and provision is not already provided in the contract, the party shall notify the other party in writing of its intention. The option may not be exercised until at least thirty days after the written notification or the beginning of the next federal tax quarter, whichever is later.

(c) The party to be reimbursed under subsection (a) of this section may require security from the reimbursing party for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The party to be reimbursed shall not change other payment terms of the contract due to the timing of the tax reimbursement, but may require the taxes to be reimbursed by electronic transfer of funds.

(d) This section applies to all continuing contracts now in effect that have no expiration date and all contracts entered into or renewed after the effective date of this section as enacted in two thousand five.

WV Legislature

§47-18-1. Short title.

This article shall be known and may be cited as the "West Virginia Antitrust Act."

WV Legislature

§47-18-2. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Person" shall mean any natural person or persons, or any corporation, partnership, company, trust or association of persons.

(b) "Trade or commerce" shall include all economic activity involving or relating to any commodity or service.

(c) "Commodity" shall mean any kind of real or personal property.

(d) "Service" shall mean any activity which is performed in whole or in part for the purpose of financial gain, including but not limited to sale, rental, leasing or licensing for use.

WV Legislature

§47-18-3. Contracts and combinations in restraint of trade.

(a) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in this state shall be unlawful.

(b) Without limiting the effect of subsection (a) of this section, the following shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) A contract, combination or conspiracy between two or more persons:

(A) for the purpose or with the effect of fixing, controlling, or maintaining the market price, rate or fee of any commodity or service; or

(B) fixing, controlling, maintaining, limiting or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of fixing, controlling or maintaining the market price, rate or fee of the commodity or service; or

(C) allocating or dividing customers or markets, functional or geographic, for any commodity or service.

(2) A contract, combination or conspiracy between two or more persons whereby, in the letting of any public or private contract:

(A) the price quotation of any bid is fixed or controlled; or

(B) one or more persons submits a bid intending it to be higher than another bid and thus complementary thereto, submits a bid intending it to be substantially identical to another bid, or refrains from the submission of a bid.

(3) A contract, combination or conspiracy between two or more persons refusing to deal with any other person or persons for the purpose of effecting any of the acts described in subdivisions (1) and (2) of this subsection.

WV Legislature

§47-18-4. Establishment, maintenance or use of monopoly.

The establishment, maintenance or use of a monopoly or an attempt to establish a monopoly of trade or commerce, any part of which is within this state, by any persons for the purpose of excluding competition or controlling, fixing or maintaining prices is unlawful.

WV Legislature

§47-18-4a.

Repealed.

Acts, 1996 Reg. Sess., Ch. 72.

WV Legislature

§47-18-5. Exemptions.

(a) Labor of a human being is not a commodity or an article of commerce.

(b) Nothing in this article shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects; or the existence or operation of any person whose activities or operations are regulated, to the extent of such regulation, pursuant to the laws of this state or of the United States, by a regulatory agency of this state or of the United States; or the bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes or both.

WV Legislature

§47-18-6. General powers and duties of Attorney General.

The Attorney General shall investigate suspected violations of, and institute such proceedings as are hereinafter provided for violation of the provisions of this article. The Attorney General may direct the county prosecutor of any county in which such proceedings may be brought to aid and assist him in the conduct of such investigation and proceedings.

WV Legislature

§47-18-7. Investigations; powers and duties of Attorney General.

(a) If the Attorney General has probable cause to believe that a person has engaged in an act which is subject to action by the Attorney General under any of the provisions of this article, he may make an investigation to determine if the act has been committed and, to the extent necessary for this purpose, may administer oaths or affirmations, and may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, records, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If the person's records are located outside this state, the person at his option shall either make them available to the Attorney General at a convenient location within this state or pay the reasonable and necessary expenses for the Attorney General or his representative to examine them at the place where they are maintained. The Attorney General may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(c) Upon failure of a person without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Attorney General may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance.

(d) The Attorney General shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

WV Legislature

§47-18-8. Injunctions and other relief; violations; jurisdiction.

The Attorney General may institute proceedings to prevent and restrain violations of the provisions of this article. In addition to granting such temporary, interlocutory, or permanent relief as is necessary to prevent and restrain a violation, the courts of this state may grant injunctions reasonably necessary to restore and preserve competition in the trade or commerce affected by a violation of this article.

If a permanent injunction is issued in such proceedings, reasonable costs of the action may be awarded the state, including but not limited to expenses of discovery and document reproduction.

In addition to injunctive relief authorized, any person who violates the provisions of this article shall be liable to a penalty of not more than the greater of a total of $100,000 or $500 per day for each and every day of said violation.

WV Legislature

§47-18-9. Damages; treble damage suits.

Any person who shall be injured in his business or property by reason of a violation of the provisions of this article may bring an action therefor and shall recover threefold the damages sustained by him together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to the expenses of discovery and document reproduction.

The state and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section. The Attorney General may bring an action on behalf of this state, or any of its public agencies, counties, municipalities or other political subdivisions to recover the damages provided for by this section or provision of federal law: Provided, That this shall not impair the authority of any such county, municipality or other political subdivision to bring such action on its own behalf.

WV Legislature

§47-18-10. Final judgment in civil proceeding as prima facie evidence.

A final judgment rendered in any civil proceeding brought by the state for violation of this article to the effect that a defendant has violated said article shall be prima facie evidence against such defendant in any proceeding brought by any other party against such defendant pursuant to section eight of this article, as to all matters with respect to which said judgment or decree would be an estoppel as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken.

WV Legislature

§47-18-11. Limitation of actions.

Any action brought to enforce the provisions of this article shall be barred unless commenced within four years after the cause of action arose, or if the cause of action is based upon a conspiracy in violation of this article, within four years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered the facts relied upon for proof of the conspiracy. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of such violation.

WV Legislature

§47-18-12. Suspension of limitation period.

Whenever any civil proceeding shall be commenced by the state to prevent, restrain or punish a violation of this article, the running of the statute of limitations in respect of every private right of action arising under this article and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, That whenever the running of the statute of limitations in respect of a cause of action arising under section eight shall be suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued, whichever is later.

WV Legislature

§47-18-13. Cumulative remedies.

The remedies provided in this article shall be cumulative.

WV Legislature

§47-18-14. Cooperation with federal government and other states.

The Attorney General may cooperate with officials of the federal government and the several states in the enforcement of this article.

WV Legislature

§47-18-15. Venue.

Actions or proceedings under this article may be brought in the circuit court of any county in which an act on which the action or proceeding is based occurred, or in any county in which the respondent or defendant resides or transacts business.

WV Legislature

§47-18-16. Judicial construction.

This article shall be construed liberally and in harmony with ruling judicial interpretations of comparable federal antitrust statutes.

WV Legislature

§47-18-17. Attorney general to bring actions on behalf of state residents; procedures used in such actions; damages.

(a) The Attorney General shall be permitted to bring an action as parens patriae of natural persons who are citizens and residents of this state, under this article, and in proper federal court for violations of the federal antitrust laws or of both this article and the federal antitrust laws, to secure relief as provided under this article and other lawful relief as appropriate.

(b) In any action brought under this section, the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to this subsection.

(d) The final judgment in an action under this section shall be res judicata as to any claim under this article by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to subsection (c).

(e) An action under subsection (a) shall not be dismissed or compromised without approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(f) In any action brought under this section, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief which:

(1) duplicate amounts which have been awarded for the same injury; or

(2) are properly allocable to natural persons who have excluded their claims pursuant to subsection (c).

(g) In any action brought under this section, the court shall award to the state for payment into the state Treasury for the use of the antitrust enforcement fund:

(1) an amount attributable to the recovery of the state and its public agencies; and

WV Legislature

(2) the greater of:

(A) any amount assessed as reasonable attorney fees, filing fees, and reasonable costs of the action; or

(B) an amount equal to the expenses and costs of investigation, litigation and fund administration attributable to the case.

(h) The court shall afford the citizens and residents and the public bodies of this state other than the state and its public agencies a reasonable opportunity individually to secure appropriate portions of the remainder of the monetary relief assessed under this section and thereafter shall award the undistributed portion of said remainder to the state for payment into the General Fund of the state Treasury for the overall benefit of the citizens, residents and public bodies of this state.

WV Legislature

§47-18-18. Disposition of funds.

All civil penalties exacted pursuant to this article, unless otherwise specifically provided for, shall be paid into the state Treasury for the use of the antitrust enforcement fund.

WV Legislature

§47-18-19. Antitrust enforcement fund.

All money received by the state as a result of actions by the Attorney General pursuant to this article or to the federal antitrust laws shall be placed in a separate fund by the state Treasurer, to be known as the antitrust enforcement fund, and shall be used solely for the payment of fees, costs and expenses incurred by the Attorney General in connection with antitrust enforcement activities and the first $300,000 in this fund shall not expire at the end of each fiscal year but shall, by operation of law, be automatically reappropriated from year to year and all sums in excess of $300,000 remaining in such fund shall expire at the end of each fiscal year and shall revert to the General Revenue Fund.

WV Legislature

§47-18-20. Rules and regulations.

The Attorney General may make and adopt such rules and regulations as may be necessary for the enforcement and administration of this article.

WV Legislature

§47-18-21. Cooperation by public agencies, officials and employees.

It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates and employees, to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession and within their power for the enforcement of the provisions of this article.

WV Legislature

§47-18-22. Assurances of voluntary compliance.

In the administration of this article, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be a violation of this article from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator of damages sustained by any person or public body. Any such assurance shall be in writing and be filed with the circuit court in which the alleged violator resides, has his principal place of business, or is doing business. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

WV Legislature

§47-18-23. 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

§47-19-1. Items designed or marketed for use with controlled substances; license required.

It shall be unlawful for any person or persons as principal, clerk, agent or servant to sell any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances, as defined in chapter sixty-a of this code, without obtaining a license therefor from the State Tax Commissioner. Such licenses shall be in addition to any or all other licenses held by applicant. The fee for such license shall be $150.

WV Legislature

§47-19-2. Application.

(a) Application to sell any item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances shall be accompanied by affidavits by applicant and each and every employee authorized to sell such items that such person has never been convicted of a drug-related offense.

WV Legislature

§47-19-3. Drug paraphernalia defined.

(a) The following items, if marketed for use or designed for the use with controlled substances, are considered drug paraphernalia for the purpose stated in §47-19-1 *et seq*. of this code:

(1) Kits marketed for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits marketed for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices marketed for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances: *Provided*, That test strips are not considered drug paraphernalia for the purpose stated in §47-19-1 *et seq*. of this code;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters marketed for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers marketed for use, or designed for use in packaging small quantities of controlled substances;

(10) Hypodermic syringes, needles, and other objects marketed for use, or designed for use in parenterally injecting controlled substances into the human body;

(11) Paper of colorful design, with names oriented for use with controlled dangerous substances and displayed: *Provided*, That white paper or tobacco-oriented paper not necessarily designed for use with controlled substances is not covered;

(12) Pipes displayed in the proximity of roach clips, or literature encouraging illegal use of controlled substances, are covered by this article: *Provided*, That pipes otherwise displayed are not covered by this article;

WV Legislature

(13) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that have become too small or too short to be held in the hand;

(14) Miniature cocaine spoons and cocaine vials; and

(15) Chillums or bongs.

(b) In determining whether an object is marketed for use or designed for use as drug paraphernalia, the State Tax Commissioner or other authority should consider the following:

(1) The proximity of the object, in time and space, to a controlled substance;

(2) The existence of any residue of controlled substances on the object;

(3) Instructions, oral or written, provided with the object concerning its use;

(4) Descriptive materials accompanying the object which explain or depict its use;

(5) National and local advertising concerning its use;

(6) The manner in which the object is displayed for sale;

(7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise; and

(9) The existence and scope of legitimate uses for the object in the community.

WV Legislature

§47-19-4. Records.

Every licensee must keep a record of every item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances which is sold, and this record shall be open to the inspection of any police officer at any time during the hours of business. Such record shall contain the name and address of the purchaser, the name and quantity of the product, the date and time of the sale, and the licensee or agent of the licensee's signature. Such records shall be retained for not less than two years.

WV Legislature

§47-19-5. Regulations.

The applicant shall comply with all applicable rules of the State Tax Commissioner, promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

WV Legislature

§47-19-6. Sale to minors prohibited; penalty.

It shall be unlawful to sell items as described in section three of this article in any form to any male or female child under eighteen years of age. Any person eighteen years of age or older who violates this section is guilty of a felony, and, upon conviction thereof, may be imprisoned in the penitentiary for not less than one nor more than five years, or in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than $15,000, or both.

WV Legislature

§47-19-7. Penalty.

Any person violating any provision of this article shall, if convicted, be guilty of a misdemeanor and, be fined not less than $10 nor more than $500 for the first offense and succeeding offenses, and each day that such violation shall continue shall be deemed a separate and distinct offense.

WV Legislature

§47-19-8. Sale of drug paraphernalia at certain events or outdoors prohibited.

(a) Any person who attempts to sell or offer for sale drug paraphernalia as such is defined in section three of this article at any fair, festival, musical or theatrical production or at any event performed or conducted outdoors is guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $500.

(b) Any person who attempts to sell or offer for sale items as described in section three of this article at any temporary roadside booth or table along any municipal street or highway is guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $500.

WV Legislature

§47-20-1. Legislative intent.

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

WV Legislature

§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

§47-20-5a. Venue.

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

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

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

WV Legislature

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

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

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

WV Legislature

§47-20-6a. Super bingo license.

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

§47-20-8. Amendment of license.

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

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

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

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

WV Legislature

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

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

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

WV Legislature

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

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

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

WV Legislature

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

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

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

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

(A) Residents of this state;

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

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

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

WV Legislature

§47-20-12. Compensation.

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

WV Legislature

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

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

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

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

(A) Residents of this state;

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

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

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

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

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

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

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

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

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

WV Legislature

§47-20-13. Concessions exception.

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

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§47-20-14.

Repealed.

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

WV Legislature

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

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

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

(2) The cost of custodial services;

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

§47-20-17. Advertising.

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

WV Legislature

§47-20-18. Fraud; penalties.

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

§47-20-21. Proceeds of state fair.

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

WV Legislature

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

§47-20-24. Filing of reports.

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

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

WV Legislature

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

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

WV Legislature

§47-20-26. County option election.

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

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

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

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

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

Name Address Date

.....

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

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

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

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

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

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

/ / Yes / / No

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

§47-20-29. Effective date.

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

WV Legislature

§47-20-30. Severability.

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

(b) Administrative procedures.

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

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

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

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

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

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§47-21-14.

Repealed.

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

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§47-21-17. Advertising.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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:

WV Legislature

(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.

WV Legislature

§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

WV Legislature

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

WV Legislature

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

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

"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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

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;

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§47-21A-15. Advertising.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§47-22-1. Definitions.

As used in this article, unless the context requires otherwise:

(a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

(b) "Misappropriation" means:

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of another person's trade secret without the other's express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it; or

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake.

(c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

(d) "Trade secret" means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

WV Legislature

§47-22-2. Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which the use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of a misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

WV Legislature

§47-22-3. Damages.

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation occurs, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

WV Legislature

§47-22-4. Attorney's fees.

If (a) a claim of misappropriation is made in bad faith, or (b) a motion to terminate an injunction is made or resisted in bad faith, or (c) willful and malicious misappropriation occurs, the court may award reasonable attorney's fees to the prevailing party.

WV Legislature

§47-22-5. Preservation of secrecy.

In an action brought pursuant to this article, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

WV Legislature

§47-22-6. Statute of limitations.

An action for misappropriation must be brought within three years after the misappropriation is discovered or, by the exercise of reasonable diligence, should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

WV Legislature

§47-22-7. Effect on other law.

(a) Except as provided in subsection (b), of this section, this article displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This article does not affect:

(1) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) Other civil remedies that are not based upon misappropriation of a trade secret; or

(3) Criminal remedies, whether or not based upon misappropriation of a trade secret.

WV Legislature

§47-22-8. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

WV Legislature

§47-22-9. Short title.

This article may be cited as the "Uniform Trade Secrets Act."

WV Legislature

§47-22-10. Time of taking effect.

This article takes effect on July 1, 1986, and does not apply to misappropriations occurring prior to the effective date or to misappropriations which began prior to the effective date and continue past the effective date.

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

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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.

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§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

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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

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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

§47-24-1. Short title.

The article may be cited as the "Reverse Mortgage Enabling Act."

WV Legislature

§47-24-2. Statement of purpose.

It is the intent of this legislation that elderly homeowners be permitted to meet their financial needs by accessing the equity in their homes through a reverse mortgage.

The Legislature recognizes that many restrictions and requirements that exist to govern traditional mortgage transactions are inapplicable in the context of reverse mortgages.

In order to foster reverse mortgage transactions and better serve the elderly citizens of this state, the Legislature authorizes the making of reverse mortgages, and expressly relieves reverse mortgage lenders and borrowers from compliance with inappropriate requirements.

WV Legislature

§47-24-3. Definition.

"Reverse mortgage" means a nonrecourse loan secured by real property which:

(1) Provides cash advances to a borrower based on the equity in a borrower's owner-occupied principal residence;

(2) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(3) Is made by any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of this state or any other lender, other than an industrial loan company, affiliated with a federally-insured depository institution in this state, and licensed as a financial institution pursuant to chapter thirty-one-a of this code.

WV Legislature

§47-24-4. General rules for reverse mortgages.

Reverse mortgage loans shall be governed by the following rules, without regard to the requirements set out elsewhere for other types of mortgage transactions:

(a) Interest. A reverse mortgage may provide for an interest rate which is fixed or adjustable, and may also provide for interest that is contingent on appreciation in the value of the property, including appreciation or shared equity.

(b) Intervening liens. All advances made under a reverse mortgage and all interest on such advances shall have priority over any lien filed after the closing of a reverse mortgage.

(c) Lender default. Lenders failing to make loan advances as required in the loan documents, and failing to cure such default as required in the loan documents, shall forfeit any right to collect interest. Lenders may also be subject to the penalty provisions set forth in chapter thirty-one-a of this code.

(d) Mortgage recordation tax. The recordation tax on reverse mortgages shall not exceed the actual cost of recording the mortgage.

(e) Periodic advances. If a reverse mortgage provides for periodic advances to a borrower, such advances shall not be reduced in amount or number based on any adjustment in the interest rate.

(f) Prepayment. Payment, in whole or in part, shall be permitted without penalty at any time during the period of the loan.

(g) Repayment.

(1) The mortgage may become due and payable upon the occurrence of any one of the following events:

(A) The title to the home securing the loan is sold or otherwise transferred;

(B) All borrowers cease occupying the home as a principal residence, subject to the additional conditions set forth in paragraph (A) and (B), subdivision (2), subsection (g) of this section;

(C) Any fixed maturity date agreed to by the lender and the borrower is reached; or

(D) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

(2) The repayment requirement is also expressly subject to the following additional conditions:

WV Legislature

(A) Temporary absences from the home not exceeding sixty consecutive days shall not cause the mortgage to become due and payable;

(B) Temporary absences from the home exceeding sixty consecutive days but less than one year shall not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender;

(C) The lender's right to collect reverse mortgage proceeds shall be subject to the applicable statute of limitations for loan contracts in section six, article two, chapter fifty-five. Notwithstanding section six, the statute of limitations shall commence on the date that the mortgage becomes due and payable;

(D) The lender must prominently disclose in the loan document any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable, and ends when repayment in full is made.

WV Legislature

§47-24-5. Inapplicability of related statutes and law.

Reverse mortgage loans may be made or acquired without regard to the following statutory provisions or relevant interpretation of law:

(a) Limitations on the purpose and use of future advances or any other mortgage proceeds;

(b) Limitations on future advances to a term of years, or limitations on the term of credit line advances;

(c) Limitations on the term during which future advances take priority over intervening advances;

(d) Requirements that a maximum mortgage amount be stated in the mortgage;

(e) Limitations on loan-to-value ratios;

(f) Prohibitions on balloon payments;

(g) Prohibitions on compounded interest and interest on interest;

(h) Interest rate limits under the usury statutes;

(i) Requirements that a percentage of the loan proceeds must be advanced prior to loan assignment; and

(j) Limitations on ongoing administrative and servicing fees.

WV Legislature

§47-24-6. Treatment of reverse mortgage loan proceeds by public benefit programs.

Notwithstanding any law relating to payments, allowances, benefits or service provided on a means-tested basis, including, but not limited to, supplemental security income, low-income energy assistance, property tax relief, medical assistance and general assistance:

(a) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means tested programs of aid to individuals.

(b) Undisbursed funds shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

WV Legislature

§47-24-7. Consumer information and counseling.

(a) No reverse mortgage commitment shall be made by a lender unless the loan applicant attests, in writing that the applicant received from the lender at time of initial inquiry a statement prepared by the commissioner of banking, in consultation with the board of the West Virginia Housing Development Fund, regarding the advisability and availability of independent information and counseling services on reverse mortgages.

(b) The commissioner of banking, in conjunction with the West Virginia Housing Development Fund, shall be responsible for:

(1) Providing independent consumer information on reverse mortgages and alternatives; and

(2) Referring consumers to independent counseling services with expertise in reverse mortgages.

WV Legislature

§47-24-8. Regulatory authority and exemptions.

(a) All reverse mortgage loans subject to this article shall be under the jurisdiction and supervision of the commissioner of banking, and subject to the regulatory authority and penalties set forth in chapter thirty-one-a of this code.

(b) The commissioner of banking shall have the authority to promulgate rules in order to affect compliance with the provisions of this article.

(c) Persons making reverse mortgage loans through a program authorized by and under the supervision of a federal governmental agency or through a federally sponsored mortgage enterprise are exempt from the provisions of this article, and may make reverse mortgages notwithstanding any provisions to the contrary in this code: Provided, That such loans are sold to those agencies or enterprises within forty-five days of loan closing and that the commissioner of banking certifies that the program provides consumers with protections against abusive practices. Loans under this subsection may, like other reverse mortgage loans, also be made or acquired without regard to relevant interpretations of law to the same extent as provided in section five of this article.

WV Legislature

§47-25-1. Short title.

This article shall be known and may be cited as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act.

WV Legislature

§47-25-2. Definitions.

(a) "Agent" means any person authorized by the State Tax Commissioner to purchase and affix stamps on packages of cigarettes.

(b) "Cigarette" means:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in this subsection.

(c) "Manufacturer" means:

(1) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer;

(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) Any entity that becomes a successor of an entity described in subdivision (1) or (2) of this subsection.

(d) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment- related problems do not affect the results of the testing. The program shall ensure that the testing repeatability remains within the required repeatability values stated in subdivision (6), subsection (a), section three of this article for all test trials used to certify cigarettes in accordance with this article.

(e) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(f) "Retail dealer" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(g) "Sale" has the same meaning as in section two, article seventeen, chapter eleven of this code.

(h) "Wholesale dealer" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

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§47-25-3. Test method and performance standard.

(a) Except as provided in subsection (g) of this section and in section ten of this article, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state, unless: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section; (ii) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section four of this article; and (iii) the cigarettes have been marked in accordance with section five of this article.

(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187-04, standard test method for measuring the ignition strength of cigarettes.

(2) Testing shall be conducted on ten layers of filter paper.

(3) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall only be applied to a complete test trial.

(5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO) or other comparable accreditation standard.

(6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(7) This section does not require additional testing if cigarettes are tested consistent with this article for any other purpose.

(8) Testing performed to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to section four of this article that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

WV Legislature

(c) A manufacturer of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (1), subsection (a) of this section shall propose a test method and performance standard for the cigarette to the state Fire Marshal. If the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision (3) of said subsection, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to section four of this article. If another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this article and the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the manufacturer may employ the alternative test method and performance standard to certify cigarettes for sale in this state, unless the state Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this article. All other applicable requirements of this section apply to the manufacturer.

(d) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the state Fire Marshal upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed $10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(e) A subsequent ASTM standard test method for measuring the ignition propensity of cigarettes may be used, if the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in subdivision (3), subsection (a) of this section.

(f) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature, if appropriate, recommendations for legislation to improve the effectiveness of this article. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(g) The requirements of subsection (a) of this section shall not prohibit:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this article if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retail dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this

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subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of those cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This article shall be implemented and construed as to effectuate its general purpose to make uniform the law of those states that have enacted reduced cigarette ignition propensity laws.

WV Legislature

§47-25-4. Certification and product change.

(a) Each manufacturer shall submit to the state Fire Marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with section three of this article; and

(2) Each cigarette listed in the certification meets the performance standard set forth in section three of this article.

(b) Each cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking pursuant to section five of this article;

(9) The name, address and telephone number of the laboratory, if different from the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The certifications shall be made available to the state Fire Marshal for the purposes of ensuring compliance with this section.

(d) Each cigarette certified under this section shall be recertified every three years.

(e) At the time it submits a written certification under this section, a manufacturer shall pay a fee of $1,000 to the state Fire Marshal for each brand family of cigarettes listed in the certification. The fee shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) All moneys collected as certification fees submitted by manufacturers shall be deposited

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in a special account in the state Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The fund shall be administered by the Tax Commissioner. Expenditures from the fund are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2010, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. The fund shall, in addition to any other moneys made available for those purposes, be equally divided and distributed without appropriation between the state Fire Marshal and the State Tax Commissioner to support fire prevention activities and processing, testing, enforcement and oversight activities under this article.

(g) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to the cigarette that is likely to alter the cigarette's compliance with the reduced cigarette ignition propensity standards required by this article, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section three of this article and maintains records of that retesting as required by section three of this article. Any altered cigarette which does not meet the performance standard set forth in section three of this article may not be sold in this state.

WV Legislature

§47-25-5. Marking of cigarette packaging.

(a) Cigarettes that are certified by a manufacturer in accordance with section four of this article shall be marked to indicate compliance with the requirements of section three of this article. The marking shall be in eight-point type or larger and consist of:

(1) Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC;

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this article.

(b) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer.

(c) The State Tax Commissioner shall be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall submit its proposed marking to the State Tax Commissioner for approval. Upon receipt of the request, the State Tax Commissioner shall approve or disapprove the marking offered, except that the State Tax Commissioner shall approve:

(1) Any marking in use and approved for sale in another state; or

(2) The letters "FSC", which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

(e) A manufacturer shall not modify its approved marking unless the modification has been approved by the State Tax Commissioner in accordance with this section.

(f) Manufacturers certifying cigarettes in accordance with section four of this article shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the State Tax Commissioner and its agents to inspect markings of cigarette packaging marked in accordance with this section.

WV Legislature

§47-25-6. Penalties.

(a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section three of this article, is subject to a civil penalty not to exceed $100 for each pack of the cigarettes sold or offered for sale: Provided, That in no case shall the penalty against that person or entity exceed $100,000 during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of section three of this article is subject to a civil penalty not to exceed $100 for each pack of the cigarettes sold or offered for sale: Provided, That in no case shall the penalty against that retail dealer exceed $25,000 for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, any manufacturer of cigarettes that knowingly makes a false certification pursuant to section four of this article is subject to a civil penalty of at least $75,000 and not to exceed $250,000 for each false certification.

(d) Any person violating any other provision in this article is subject to a civil penalty for a first offense not to exceed $1,000 and for a subsequent offense, subject to a civil penalty not to exceed $5,000 for each violation.

(e) In addition to any other remedy provided by law, the state Fire Marshal or the State Tax Commissioner may file an action in circuit court for a violation of this article, including petitioning for injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent or any other person or entity to enjoin that entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this article, or to recover any costs or damages suffered by the state because of a violation of this article, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this article or of rules promulgated under this article constitutes a separate civil violation for which the state Fire Marshal or the State Tax Commissioner may obtain relief. Upon obtaining injunctive relief under this section, the state Fire Marshal or the State Tax Commissioner shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

(f) Whenever any law-enforcement personnel or duly authorized representative of the State Tax Commissioner discovers any cigarettes for which no certification has been filed as required by section four of this article or that have not been marked in the manner required by section five of this article, they may seize and take possession of the cigarettes. The cigarettes shall be forfeited to the state. The State Tax Commissioner shall destroy any cigarettes seized pursuant to this section: Provided, That prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand may inspect the cigarette.

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§47-25-7. Implementation.

(a) The State Fire Marshal or the State Tax Commissioner may promulgate rules, pursuant to the Administrative Procedures Act, chapter twenty-nine-a of this code, necessary to effectuate the purposes of this article.

(b) The State Tax Commissioner in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under article seventeen, chapter eleven of this code, may inspect the cigarettes to determine if the cigarettes are marked as required by section five of this article.

WV Legislature

§47-25-8. Inspection.

To enforce the provisions of this article, the State Tax Commissioner and its duly authorized representatives may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale, shall give the State Tax Commissioner and its duly authorized representatives the means, facilities and opportunity for the examinations authorized by this section.

WV Legislature

§47-25-9. Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund.

All moneys collected as civil penalties under section six of this article shall be deposited in a special account in the state Treasury to be known as the Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund. The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for that purpose, be equally divided between the state Fire Marshal and the State Tax Commissioner to support fire safety and prevention programs and tax department enforcement activities.

WV Legislature

§47-25-10. Sales outside of West Virginia.

Nothing in this article shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section three of this article, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in this state.

WV Legislature

§47-25-11. Preemption.

This article shall have no force and effect if a federal law or regulation establishing a national reduced cigarette ignition propensity standard is adopted and becomes effective.

WV Legislature

§47-25-12. Local regulation.

Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation relating to cigarette fire safety standards conflicting with any provision of this article.

WV Legislature

§47-25-13. Effective date.

Except as otherwise specifically provided in this section, the provisions of this article take effect on January 1, 2010. The provisions of section twelve of this article take effect on the effective date of this article.

WV Legislature

§47-26-1. Definitions.

(a) "Pawnbroker" means any person, partnership, association or corporation or employee thereof advancing money in a pawn transaction in exchange for collateral in the property of the pledgor. Pawnbroker does not mean any bank which is regulated by the West Virginia Division of Financial Institutions; the Comptroller of the Currency of the United States; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System or any other federal or state authority; and all affiliates thereof and any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation all affiliates thereof, any state or federally chartered credit union, and any finance company subject to licensing and regulation by the West Virginia Division of Financial Institutions.

(b) "Pawn transaction" means a transaction between a pawnbroker and a pledgor where the pledgor's property is placed in the possession of the pawnbroker as security for money or other valuable consideration provided to the pledgor on the condition that the pledgor may pay a pawn charge and redeem his or her property within a predetermined time frame. Pawn transactions do not include those transactions where securities, titles or printed evidence of indebtedness are used as security for the transaction.

(c) "Pledgor" means a person who delivers the pledge into the possession of a pawnbroker.

(d) "Purchase" or "purchase transaction" means the transfer and delivering of goods by a person to a pawnbroker by acquisition for value, consignment or trade for other goods. This definition does not include purchases by pawnbrokers of items not used or intended for resale, consignment or trade of the item to another.

WV Legislature

§47-26-2. Purchase and Pawn Transaction Records.

(a) All pawnbrokers shall make and maintain a transaction report on all purchase or pawn transactions, except for refinance pawn transactions or merchandise bought from a manufacturer or wholesaler with an established place of business. The required transaction report shall include the following:

(1) The date of the transaction;

(2) The name of the seller;

(3) The name of the clerk who handled the transaction;

(4) The corresponding pawn ticket number;

(5) The terms of the loan or purchase;

(6) A copy of the seller's or pledger's government photo identification and type; Provided, That if the seller or pledger does not have a government issued photo identification, the pawnbroker shall have a photograph of the seller or pledger; and

(7) A detailed description of the property.

(b)For purposes of meeting the requirements of subsection (a) of this section, a detailed description of the property shall include the following:

(1)In the case of firearms, the description shall include the brand, model, caliber, type, and serial number;

(2) In the case of jewelry, the type of jewelry presented, the karat weight, whether it is made of white gold, yellow gold or other precious metals, and other description of the stones, shape, cut, and oddities, etc. which are sufficient to describe the article of jewelry;

(3) In the case of other types of articles and property, the description shall include the type of article, brand, model and serial number on the article, or any other such identifying information or description to which is sufficient to specifically describe the item or property.

(c) The seller or pledger shall be required to sign the pawn transaction statement or purchase transaction statement; and a signed statement from the seller or pledger affirming ownership shall appear on the bill of sale or pawn ticket that is completed by the seller or pledger at the time of the transaction.

(d) The pawnbroker shall maintain the original of all purchase or pawn transaction statements for three years, and shall make the original copies of the purchase or pawn transaction statements available for inspection by law-enforcement officers and law-enforcement agencies upon request during the posted hours of operation of the business.

WV Legislature

(e) The information required to be collected pursuant to this section is confidential, is not public record, and should only be disclosed as provided in this section or otherwise provided by law: Provided, That the confidential nature of this information in no way impedes the pawnbroker's duty to accurately collect and timely provide the information to law enforcement.

WV Legislature

§47-26-3. Penalties; pawnbroker.

A pawnbroker who violates the provisions of this article is guilty of a misdemeanor, and shall be fined not less than $100 and not more than $200 for each offense.

WV Legislature

§47-26-4. County and municipal regulation of pawnbrokers.

This article may not be construed to prohibit or otherwise limit any county or municipality of this state from adopting an ordinance, to the extent that the ordinance does not conflict or create lesser requirements than this article or any other provision of this code, establishing additional requirements of pawnbrokers within its jurisdiction. Pawnbrokers located in a county or municipality in which an ordinance establishes reporting requirements to local law-enforcement officials are not required to provide duplicate information to other law-enforcement officials pursuant to section three of this article.

WV Legislature

§47-27-1. Fair trade standards for use of court reporter services.

(a) The purpose of this article is to ensure the integrity of the use of court reporter services by establishing standards for private court reporters and entities providing or arranging for court reporting services. It is declared the policy of the State of West Virginia that fair, ethical and impartial selection and use of court reporting services are integral to the equitable administration of justice.

(b) For purposes of this article, "court reporter" means private court reporters providing court reporting services, as well as businesses, entities or firms that provide or arrange for court reporting services, and "original transcript" means the original transcription requested by a party along with a certified copy of same for purposes of filing with a court.

(c) The provisions described in this article apply to court reporting services performed in this state that are:

(1) Provided by a court reporter, wherever based, in connection with a legal proceeding commenced or maintained in this state; and

(2) Provided by a court reporter based in this state, whether the parties appear in person or by remote means.

(d) The provisions of this article do not apply to the conduct of official court reporters or their substitutes, appointed by judges pursuant to section one, article seven, chapter fifty-one of this code, when acting in their official capacities, reporters of government proceedings not relating to a legal proceeding, local or federal courts, providing real-time services for hard-of-hearing litigants, the provision of pro bono services to litigants who would qualify for the same through West Virginia Legal Aid or other similar organizations, workers' compensation proceedings or legal proceedings recorded with sound-and-visual devices. A legal proceeding includes, but is not limited to, the following:

(1) A court proceeding;

(2) A deposition;

(3) An arbitration hearing; and

(4) An examination under oath.

(e) Court reporters, businesses, entities, insurers or firms providing or arranging for court reporting services are subject to the provisions of this section even if the businesses, entities, insurers or firms are not subject to registration or other regulatory oversight in the state.

WV Legislature

§47-27-2. Prohibited conduct.

(a) A legal proceeding may not be reported by:

(1) An individual who engages in a prohibited action as provided in this section;

(2) A party to the action;

(3) A relative, employee or attorney of one of the parties;

(4) Someone with a financial interest in the action or its outcome; or

(5) A relative, employee or attorney of someone with a financial interest in the action or its outcome.

(b) Court reporters may not:

(1) Base the compensation for the court reporting services on the outcome of the proceeding or otherwise giving the court reporter or court reporting business, entity or firm a financial interest in the action. Court reporters or businesses, entities or firms providing or arranging for court reporting services may not offer or provide court reporting services where payment for those services will be made contingent on the outcome of the action.

(2) Enter into an agreement, whether formal or informal, for court reporting services which restricts the noticing attorney or party to a legal proceeding from selecting and using the court reporter of his or her own choosing or otherwise requires the noticing attorney or party to a legal proceeding to select or use a court reporter not of his or her own choosing. Before accepting an assignment for court reporting services, the court reporter is obligated to make reasonable efforts to ascertain whether any arrangement exists which is prohibited under this article .

(3) Allow the format, content or body of the transcript as certified by the court reporter to be manipulated in a manner that increases the cost of the transcript.

(4) Charge a fee for the electronic copy or paper copy of a transcript that is more than fifty-five percent of the cost of the original transcript, except by agreement of all parties to a legal proceeding. This prohibition does not apply to real-time court reporting services or accelerated transcript delivery requests made by the party requesting a copy of the transcript when the party requesting the original has not requested accelerated delivery.

(5) Require the attorney purchasing the original or a copy of the transcript to purchase extra services that were neither ordered nor desired from the court reporter as a condition for the sale of the transcript.

WV Legislature

§47-27-3. Disclosure and limitations on practices.

(a) Prior to the commencement of a legal proceeding, and at any time during or following the conclusion of a legal proceeding, an attorney or a party to that legal proceeding has the right to an itemized statement of all rates and charges for all services that have been or will be provided by the court reporter or business, entity or firm providing or arranging for court reporting services to any party to the legal proceeding.

(b) A court reporter shall certify on the certification page of each transcript of a legal proceeding, the following: "I certify that the attached transcript meets the requirements set forth within article twenty-seven, chapter forty-seven of the West Virginia Code."

(c) Each transcript of a legal proceeding shall conform to the following minimum standards:

(1) No fewer than twenty-four typed lines on standard 8-1/2 by 11 inches pages.

(2) No fewer than nine characters to the typed inch.

(3) A full line of text shall be no less than fifty-six characters and/or spaces unless timestamping is used, in which case no fewer than forty-eight characters and/or spaces shall be used on a full line of text.

(4) Timestamping may only be printed on a transcript under any of the following circumstances: (A) When a deposition is videotaped; (B) when requested by counsel on the record; and (C) when a transcript will have not less than forty-eight characters per line.

(5) The page numbers, headers and footers do not count as a line of text. Line numbers and the spaces preceding text do not count as a character.

(6) Each question and answer to begin on a separate line.

(7) Each question and answer to begin no more than five spaces from the left-hand margin with no more than five spaces from the question and answer to the text.

(8) Carry-over question and answer lines to begin at the left-hand margin.

(9) Colloquy material to begin no more than fifteen spaces from the left-hand margin, with carryover colloquy to the left-hand margin. In colloquy, text shall begin no more than two spaces after the colon following speaker identification.

(10) Quoted material to begin no more than fifteen spaces from the left-hand margin, with carry-over lines to begin no more than ten spaces from the left-hand margin.

(11) Parentheticals and exhibit markings to begin no more than fifteen spaces from the left-hand margin, with carry-over lines to begin no more than fifteen spaces from the left-hand margin.

WV Legislature

(d) The provisions of sections one, two or three of this article may not be waived or otherwise modified.

WV Legislature

§47-27-4. Penalties for violations; civil actions; and damages.

A court reporter or the entity that produces and bills for the transcript which violates the provisions of sections two or three of this article is subject to civil penalty in a court of competent jurisdiction as follows: Any party to a civil action, a court reporter, attorney or other person who has been subject to a violation of the provisions of sections two or three of this article may recover, payable to the prevailing party, a civil penalty for any willful violation of this section and the court shall assess a civil penalty of no less than $2,500 for each violation: Provided, That no more than one civil penalty under this section may be assessed in any one matter pending before the court; and if the court finds that the court reporter has engaged in a course of repeated and willful violations of this section, it may assess an additional civil penalty of up to $5,000 for each violation of this section. For any action filed pursuant to this section, the court, in its discretion, may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the prevailing party.

WV Legislature

§47-28-1. Short title.

This article may be known and cited as the Prevention of Deceptive Lawsuit Advertising and Solicitation Practices Regarding the Use of Medications Act.

WV Legislature

§47-28-2. Definitions.

As used in this article:

(1) “Legal advertisement” means a solicitation for legal services regarding the use of medications through television, radio, newspaper or other periodical, outdoor display, or other written, electronic, or recorded communications wherein the advertisement solicits clients or potential clients for legal services.

(2) “Person” means an individual or entity, including, but not limited to: (i) Attorneys; (ii) law firms; or (iii) third parties who solicit potential clients on behalf of attorneys or law firms, which pays for or authorizes a legal advertisement that solicits potential clients for attorneys or law firms under this article.

(3) “Protected health information” has the meaning given such term in 45 C.F.R. 160.103 (2013).

(4) “Solicit” means an offer to provide legal services regarding the use of medications by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

WV Legislature

§47-28-3. Deceptive legal advertising practices.

(a) *Specifically prohibited legal advertising practices.* — A person engages in an unfair or deceptive act or practice if, in a legal advertisement, the person does any of the following:

(1) Fails to contain the statement: "This is a paid advertisement for legal services.";

(2) Presents a legal advertisement as a "consumer medical alert", "health alert", "consumer alert", "public service health announcement", or substantially similar phrase suggesting to a reasonable recipient that the advertisement is offering professional, medical, or government agency advice about pharmaceuticals or medical devices rather than legal services;

(3) Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;

(4) Uses the word "recall" when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;

(5) Fails to identify the sponsor of the legal advertisement; or

(6) Fails to indicate the identity of the attorney or law firm that will represent clients, or how potential clients or cases will be referred to attorneys or law firms that will represent clients if the sponsor of the legal advertisement may not represent persons responding to the advertisement.

(b) *Disclosures and warnings for protection of patients*. —

(1) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall include the following warning: "Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor's advice can result in injury or death.".

(2) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall disclose that the subject of the legal advertisement remains approved by the U.S. Food and Drug Administration, unless the product has been recalled or withdrawn.

(c) *Appearance of required statements, disclosures, and warnings.* — Any words or statements required by this section to appear in an advertisement must be presented clearly and conspicuously.

(1) Written disclosures shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer.

WV Legislature

(2) Spoken disclosures shall be plainly audible and clearly intelligible.

(d) A person who willfully and knowingly violates this section engages in an unfair and deceptive act or practice in violation of §46A-6-101 *et seq*. of this code.

WV Legislature

§47-28-4. Wrongful use or disclosure of protected health information for solicitation of legal services regarding the use of medications.

(a) *Use or disclosure of protected health information for legal solicitation.* — A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal services regarding the use of medications.

(b) *Enforcement.* —

(1) A violation of this section is a violation of West Virginia's health privacy laws or §46A-6-101 *et seq*. of this code.

(2) In addition to any other remedy provided by law, a person who willfully and knowingly violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

(c) *Construction.* — This section does not apply to the use or disclosure of protected health information to an individual's legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law.

(d) Nothing in this section creates or implies liability on behalf of a broadcaster who holds a license for over-the-air terrestrial broadcasting from the federal communications commission, or against a cable operator as defined in 47 U.S.C. §522(5).

WV Legislature

§47-28-5. Authority of judiciary or State Bar to regulate practice of law.

This article does not limit or otherwise affect the authority of the judiciary or the Lawyer Disciplinary Board to regulate the practice of law, enforce the West Virginia Rules of Professional Conduct, or discipline persons admitted to the bar.

WV Legislature