WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. _____

(By Senators _____________, President, and _____________, by request of the Executive)

PASSED May 26, 1993

In Effect from Passage
AN ACT to repeal sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two-a, article nine, chapter eleven of said code; to amend and reenact section ten, article twenty, chapter forty-seven of said code; to amend and reenact section eleven, article twenty-one of said chapter; to amend and reenact sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and fourteen, all relating to charitable bingo and charitable raffle boards and games; repealing provisions requiring indicia on charitable raffle boards or games; providing for the deposit of specified amount of fees to special revenue account; providing for remittance of balance in special revenue account to be transferred to general revenue; increasing the limits on prizes awarded in bingo and charitable raffles; providing
definitions for retail value for the purpose of imposition of fee; amending definition of charitable raffle board or game; requiring serial numbers or other form of verification to be affixed to charitable raffle boards or games; requiring wholesalers and distributors be licensed to do business in this state; requiring the appointment of an agent for service of process in order to do business in state; providing criminal penalties for violations of article; allowing emergency rulemaking for initial promulgation; and specifying an effective date for new article relating to charitable raffle boards and games.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two-a, article nine, chapter eleven of said code be amended and reenacted; that section ten, article twenty, chapter forty-seven of said code be amended and reenacted; that section eleven, article twenty-one of said chapter be amended and reenacted; that sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections seven-a and fourteen, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation section established; funding of same.

1 A criminal investigation section consisting of no more than twelve investigators plus necessary support staff is hereby established within the state tax division for the purpose of assuring compliance with laws, rules and regulations pertaining to the taxes or credits established by articles eleven, eleven-a, eleven-b, twelve, twelve-a, twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seventeen, eighteen, nineteen,
twenty-three, twenty-four and twenty-six of this chapter, and articles twenty, twenty-one and twenty-three, chapter forty-seven of this code. Charitable bingo fees imposed under sections six and six-a, article twenty of said chapter; charitable raffle fees imposed under section seven, article twenty-one of said chapter; and charitable raffle boards and games fees imposed under section three, article twenty-three of said chapter in an amount not to exceed three hundred fifty thousand dollars in any fiscal year shall be deposited in a special revenue account established in the office of the treasurer and shall be used to support compliance expenditures relating to the establishment, maintenance and support of such criminal investigation section. Prior to the close of the fiscal year, any moneys in the special revenue account in excess of fifty thousand dollars shall be transferred to the general revenue fund.

Any employee of the criminal investigation section so designated by the tax commissioner who shall have a background in accounting and who shall be certified as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of this article in any county or municipality of this state. The commissioner shall establish such additional standards as he or she deems applicable or necessary. Any such employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his or her office. The department of public safety, any county sheriff, or deputy sheriff, or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of this article and the crimi-
nal penalty provisions of this article or any article of
this chapter administered under this article.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

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

1 Except as otherwise provided in section twenty-two
of this article, the total value of all prizes awarded by
a licensee during the period of a license, may not
exceed in value eighty-five percent of the gross
proceeds collected during that period: Provided, That
notwithstanding the foregoing limitation, the 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
seven thousand five hundred dollars in value.

2 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.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-11. Limits on prizes awarded — General provisions.

1 During the period of a license, the total value of all
prizes awarded by a licensee shall not exceed in value
eighty-five percent of the gross proceeds collected
during such period: Provided, That notwithstanding
the foregoing limitation, the total prizes awarded by a
licensee, or in the aggregate by two or more limited
occasion licensees holding a joint raffle occasion, for
any raffle occasion held pursuant to a limited occasion
license, may not exceed in value seven thousand five
hundred dollars.

2 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.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.


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
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33 identifiable serial number which is required to be
34 printed on each ticket in a charitable raffle board or
35 charitable raffle game or such other form of identifi-
36 cation as may be prescribed by the tax commissioner
37 upon a showing of undue hardship by the taxpayer:
38 
39 Provided, That such other form of identification shall
40 be prescribed by rule in accordance with the provi-
41 sions of article three, chapter twenty-nine-a of this
42 code.
43 
44 (h) "Wholesaler" or "distributor" means any person
45 or entity engaged in the wholesale distribution of
46 charitable raffle boards or games or similar boards or
47 devices, as defined by the commissioner, and licensed
48 under the provisions of this article, to distribute said
49 devices to charitable raffle boards or games retailers as
50 defined in this article. It also includes anyone who is
51 engaged in the manufacturing, packaging, preparing or
52 repackaging of charitable raffle boards or games for
53 distribution in this state.

§47-23-3. Fees.

1 Wholesalers or distributors of charitable raffle
2 boards and games to retailers shall be licensed and a
3 license fee in the amount of five hundred dollars shall
4 be paid to the commissioner by each wholesaler or
5 distributor for an annual license. Wholesalers and
6 distributors shall also pay a fee of twenty cents on
7 each dollar of retail value of each charitable raffle
8 board or game sold to a retailer. This fee shall be in
9 addition to any tax imposed pursuant to the provisions
10 of article fifteen, chapter eleven of this code. The fees
11 imposed by this article shall be deposited in accor-
12 dance with the provisions of section two-a, article
13 nine, chapter eleven of this code.

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

1 (a) Any wholesaler or distributor supplying charita-
2 ble raffle boards or games to retailers in this state
3 shall be registered to do business in this state pursuant
4 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 wholesal-
ers or distributors of charitable raffle boards or games
upon designating to the tax commissioner a resident
agent upon whom notices, orders or other communica-
tions issued pursuant to this article may be served and
upon whom process may be served.

§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 the
twentieth day of April, 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 ascertain-
ment 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 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.

§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 twenty-five dollars 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 one thousand dollars nor more than ten thousand dollars, 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 five thousand dollars nor more than ten thousand dollars 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 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,
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 three hundred dollars nor more
than five thousand dollars, 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 destruc-
tion 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.
§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.

§47-23-14. Effective date of article.

The provisions of this article enacted in the year one thousand nine hundred ninety-three shall be effective on and after the ninth day of July, one thousand nine hundred ninety-three.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st day of June, 1993.

Governor
PRESENTED TO THE
GOVERNOR

Date 5/28/93
Time 2:00 pm