

SB 241

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute For

SENATE BILL NO. 241

(By Senator CHAFFIN, ET AL)



PASSED MARCH 11, 1995

In Effect 20 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 241

(SENATORS CHAFIN, PLYMALE, ROSS AND ANDERSON,
original sponsors)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to repeal section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fourteen, article twenty-one of said chapter; to amend and reenact sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter; to amend and reenact sections four, eleven, fourteen, fifteen and twenty-two, article twenty-one of said chapter; and to amend and reenact section two, article twenty-three of said chapter, all relating to licensure and reporting requirements relating to charitable bingo, raffles, raffle boards or games; repealing provisions relating to limitations on permissible amounts of rent which may be received for premises upon which bingo and raffle occasions are held; providing that certain junior firemen may assist in the conduction of bingo games; prohibiting hiring persons to advertise; allowing acceptance of personal

checks by licensees; removing certain limitations on prizes awarded during duration of bingo license period; allowing twenty-five percent of gross proceeds to be used to pay expenses; increasing the number of paid employees for charitable bingo games, operating bingo games and related concessions; requiring operators to be residents of this state; limiting rent payments to the fair market value of the premises; permitting nonprofit entities holding raffle and bingo occasions receiving state or federal funds to elect annual reporting periods which coincide with the licensee's fiscal year; permitting licensed public accountants to compile and review or audit records of licensed entities holding raffle or bingo occasions; deleting requirement for audited financial reports in accordance with certain standards; permitting nonprofit social clubs to hold raffle license; removing certain limitations on awards of raffle prizes; allowing thirty percent of raffle gross proceeds from raffle license be used for payment of expenses; and providing that persons donating raffle or game items or services without compensation are not required to be licensed as a wholesaler or distributor.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fourteen, article twenty-one of said chapter be repealed; that sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter be amended and reenacted; that sections two, four, eleven, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted; and that sections four, eleven, fifteen and twenty-two, article twenty-three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-4. Annual license; conditions on holding of games.

- 1 A charitable or public service organization or any of its
- 2 auxiliaries or other organizations otherwise affiliated

3 with it may apply for an annual license. Only one license
4 per year in the aggregate may be granted to a charitable
5 or public service organization and all of its auxiliaries or
6 other associations or organizations otherwise affiliated
7 with it: *Provided*, That for purposes of this section the
8 various branches, chapters or lodges of any national
9 association or organization or local churches of a nation-
10 ally organized church are not considered affiliates or
11 auxiliaries of each other. The commissioner shall by
12 regulation provide for the manner for determining to
13 which organization, whether the parent organization, an
14 affiliate or an auxiliary, the one license allowed under
15 this section is granted. An annual license is valid for one
16 year from the date of issuance and entitles only the
17 licensee to hold no more than two bingo occasions per
18 week. No two or more organizations may hold a joint
19 bingo occasion under any annual licenses. No bingo
20 occasion held pursuant to an annual license may exceed
21 six hours duration.

22 A licensee shall display its annual bingo license
23 conspicuously at the location where the bingo occasion
24 is held.

25 All bingo occasions shall be open to the general public:
26 *Provided*, That no licensee shall permit or allow any
27 individual under the age of eighteen to participate in the
28 playing of any bingo game with knowledge or reason to
29 believe that the individual is under the age of eighteen:
30 *Provided, however*, That an individual under the age of
31 eighteen may attend the playing of a bingo game when
32 accompanied by and under the supervision of an adult
33 relative or a legal guardian of said individual: *Provided*
34 *further*, That nothing contained herein may be construed
35 to prohibit junior volunteer firefighters sixteen years of
36 age or older from assisting the volunteer fire company of
37 which such junior firefighter is a member in the conduct
38 of an event under this article where such junior fire-
39 fighter is supervised by a senior member of the same
40 volunteer fire company who is over the age of twenty-
41 one years.

42 Any licensee may receive and cash personal checks in
43 an amount not to exceed one hundred dollars during the
44 normal operation of a bingo game.

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

1 Except as otherwise provided in section twenty-two of
2 this article, during the period of a license the average
3 total prizes awarded by a licensee, or in the aggregate by
4 two or more limited occasion licensees holding a joint
5 bingo occasion, for any bingo occasion held pursuant to
6 an annual or limited occasion license, may not exceed
7 seven thousand five hundred dollars in value.

8 Prizes may be money or merchandise other than beer,
9 nonintoxicating beer, wine, spirits or alcoholic liquor as
10 defined in section five, article one, chapter sixty of this
11 code. If the prizes are merchandise, the value assigned
12 to them is their fair market value at the time of pur-
13 chase.

§47-20-11. Operator of bingo games and related concessions.

1 Except as provided in sections thirteen and twenty-two
2 of this article, only persons, as defined in section two of
3 this article, who are residents of this state and who are
4 active members of the licensee organization or its
5 authorized auxiliary organization may participate in any
6 manner in the conduct of any bingo game or operate any
7 concession in conjunction with a bingo occasion: *Pro-*
8 *vided*, That notwithstanding anything contained in this
9 article to the contrary, no individual under the age of
10 eighteen years may directly or indirectly participate in
11 the conduct of a bingo game.

§47-20-12a. Compensation of bingo operator; number of employees.

1 (a) Within the guidelines set forth in subsections (b), (c)
2 and (d) of this section, a licensee may pay a salary, not to
3 exceed the federal minimum wage, to operators of bingo
4 games who are active members of the licensee organiza-
5 tion.

6 (b) If the licensee's gross receipts from bingo occasions
7 equal or exceed one hundred thousand dollars for the
8 licensee's most recently filed annual financial report, a
9 salary may be paid to not more than five operators.

10 (c) If the licensee's gross receipts from bingo occasions
11 are less than one hundred thousand dollars, but equal or
12 exceed fifty thousand dollars for the licensee's most
13 recently filed annual financial report, a salary may be
14 paid to not more than three operators.

15 (d) If the licensee's gross receipts from bingo occasions
16 are less than fifty thousand dollars for the licensee's
17 most recently filed annual financial report, a salary may
18 be paid to no more than two operators.

**§47-20-15. Payment of reasonable expenses from proceeds;
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of bingo occa-
3 sions, not to exceed twenty-five percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of bingo, includ-
6 ing, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided,*
8 That a copy of the rental agreement was filed with the
9 bingo license application and any changes thereto were
10 filed within ten days of being made: *Provided, however,*
11 That in no event may the rent paid for the use of any
12 premises exceed the fair market value of rent for such
13 premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equipment
16 and supplies used to conduct the bingo occasion;

17 (4) The cost to the licensee organization for advertising
18 the bingo occasion;

19 (5) The cost of hiring security personnel, licensed
20 pursuant to the provisions of article eighteen, chapter

21 thirty of this code; and

22 (6) The cost of providing child care services to the
23 raffle patrons: *Provided*, That any proceeds received
24 from the provision of child care services shall be handled
25 the same as raffle proceeds.

26 (b) The actual cost to the licensee for prizes, not to
27 exceed the amounts as specified in section ten of this
28 article, may be paid out of the gross proceeds of the
29 conduct of bingo.

30 (c) The cost of any refreshments, souvenirs or any other
31 item sold or otherwise provided through any concession
32 to the patrons may not be paid for out of the gross
33 proceeds from the bingo occasion. The licensee shall
34 expend all net bingo proceeds and any interest earned
35 thereon for the charitable or public service purposes
36 stated in the application within one year after the
37 expiration of the license under which the bingo occa-
38 sions were conducted. A licensee which does not qualify
39 as a qualified recipient organization may apply to the
40 commissioner at the time it applies for a bingo license or
41 as provided in subsection (e) of this section for permis-
42 sion to apply any or all of its net proceeds to directly
43 support a charitable or public service activity or en-
44 deavor which it sponsors.

45 (d) No gross proceeds from any bingo operation may be
46 devoted or in any manner used by any licensee or quali-
47 fied recipient organization for the construction or
48 acquisition of real or personal property except that
49 which is used exclusively for one or more charitable or
50 public service purposes or as provided in subdivision (3),
51 subsection (a) of this section.

52 (e) Any licensee which, in good faith, finds itself unable
53 to comply with the requirements of this provision shall
54 apply to the commissioner for permission to expend its
55 net proceeds for one or more charitable or public service
56 purposes other than that stated in its license application
57 or for permission to expend its net proceeds later than

58 the one-year time period specified in this section. The
59 application shall be on a form furnished by the commis-
60 sioner and shall include the particulars of the requested
61 changes and the reasons for the changes. The applica-
62 tion shall be filed no later than sixty days before the end
63 of the one-year period specified in this section. In the
64 case of an application to extend the time in which the
65 net proceeds are to be expended for a charitable or
66 public service purpose, the licensee shall file such
67 periodic reports with the commissioner as the commis-
68 sioner directs until the proceeds are so expended.

§47-20-17. Advertising.

1 A licensee may advertise its bingo occasions in a
2 manner reasonably necessary to promote the occasion:
3 *Provided*, That a licensee may not hire any person, as
4 defined in section two of this article, to develop or
5 conduct an advertising campaign to promote any bingo
6 occasion.

§47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with
2 the tax commissioner a quarterly and an annual finan-
3 cial report summarizing its bingo operations for the time
4 period covered by the report. Each quarterly report
5 shall be filed within twenty days after the end of the
6 quarter which it covers. The annual report shall be filed
7 within thirty days after the expiration of the license
8 under which the operations covered by the report were
9 held. The time period covered by the annual report is
10 the full license year or, at the election of a licensee
11 receiving state or federal funding, the most recently
12 ended state or federal fiscal year.

13 Each licensee holding a limited occasion license or
14 state fair license shall file with the tax commissioner a
15 financial report summarizing its bingo operations for the
16 license period within thirty days after the expiration of
17 the license under which the operations covered by the
18 report are held. The report shall contain the name,

19 address and social security number of any individual
20 who receives during the course of a bingo occasion prizes
21 the aggregate value of which exceeds one hundred
22 dollars, and other information required by the commis-
23 sioner: *Provided*, That any licensee failing to file such
24 report when due shall be liable for a penalty of twenty-
25 five dollars for each month or fraction thereof during
26 which the failure continues, such penalty not to exceed
27 one hundred dollars: *Provided, however*, That annual
28 financial reports for years ending after the first day of
29 July, one thousand nine hundred ninety-three, must
30 contain a compilation and review of such financial
31 report by a certified or licensed public accountant, or
32 may be audited by a certified or licensed public accoun-
33 tant, if a licensee's gross receipts exceed fifty thousand
34 dollars.

ARTICLE 21. CHARITABLE RAFFLES.

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

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

10 (b) Application for a raffle license shall be made to the
11 tax commissioner and shall be on a form which shall be
12 supplied by him. The application shall contain the
13 information required by section eight of this article and
14 any other information which the commissioner considers
15 necessary. An application shall be filed not less than
16 sixty days before the date when the applicant intends to
17 hold its first raffle occasion. An application which is not
18 denied within thirty days after filing is considered
19 approved and the commissioner shall, within five days

20 after the expiration of such thirty days, send to the
21 applicant its license.

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

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

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

1 During the period of a license, the total prizes awarded
2 by a licensee, or in the aggregate by two or more limited
3 occasion licensees holding a joint raffle occasion, for any
4 raffle occasion held pursuant to a limited occasion
5 license, may not exceed in value seven thousand five
6 hundred dollars.

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

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

1 (a) The reasonable, necessary and actual expenses
2 incurred in connection with the conduct of raffle occa-
3 sions, not to exceed twenty-five percent of the gross
4 proceeds collected during a license period, may be paid
5 out of the gross proceeds of the conduct of raffle, includ-
6 ing, but not limited to:

7 (1) Rent paid for the use of the premises: *Provided,*
8 That a copy of the rental agreement was filed with the
9 raffle license application with any modifications thereto
10 to be filed within ten days of being made: *Provided,*
11 *however,* That in no event may the rent paid for the use
12 of any premises exceed the fair market value of rent for

13 such premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equipment
16 and supplies used to conduct the raffle occasion;

17 (4) The cost to the licensee organization for advertising
18 the raffle occasion;

19 (5) The cost of hiring security personnel, licensed
20 pursuant to the provisions of article eighteen, chapter
21 thirty of this code; and

22 (6) The cost of providing child care services to the
23 bingo patrons: *Provided*, That any proceeds received
24 from the provision of child care services shall be handled
25 the same as bingo proceeds.

26 (b) The actual cost to the licensee for prizes, not to
27 exceed the amounts as specified in section eleven of this
28 article, may be paid out of the gross proceeds of the
29 conduct of raffle.

30 (c) The cost of any refreshments, souvenirs or any other
31 item sold or otherwise provided through any concession
32 to the patrons may not be paid for out of the gross
33 proceeds from the raffle occasion. The licensee shall
34 expend all net raffle proceeds and any interest earned
35 thereon for the charitable or public service purposes
36 stated in the application within one year after the
37 expiration of the license under which the raffle occasions
38 were conducted. A licensee which does not qualify as a
39 qualified recipient organization may apply to the com-
40 missioner at the time it applies for a raffle license or as
41 provided in subsection (e) of this section for permission
42 to apply any or all of its net proceeds to directly support
43 a charitable or public service activity or endeavor which
44 it sponsors.

45 (d) No gross proceeds from any raffle operation may be
46 devoted or in any manner used by any licensee or quali-
47 fied recipient organization for the construction, acquisi-
48 tion, improvement, maintenance or repair of real or

49 personal property except that which is used exclusively
50 for one or more charitable or public service purposes or
51 as provided in subdivision (3), subsection (a) of this
52 section.

53 (e) Any licensee which, in good faith, finds itself unable
54 to comply with the requirements of the foregoing provi-
55 sions of this section shall apply to the commissioner for
56 permission to expend its net proceeds for one or more
57 charitable or public service purposes other than that
58 stated in its license application or for permission to
59 expend its net proceeds later than the one-year time
60 period specified in this section. The application shall be
61 on a form furnished by the commissioner and shall
62 include the particulars of the requested changes and the
63 reasons for the changes. The application shall be filed
64 no later than sixty days before the end of the one-year
65 period specified in this section. In the case of an appli-
66 cation to extend the time in which the net proceeds are
67 to be expended for a charitable or public service pur-
68 pose, the licensee shall file such periodic reports with the
69 commissioner as the commissioner directs until the
70 proceeds are so expended.

§47-21-22. Filing of reports.

1 Each licensee holding an annual, limited or state fair
2 license shall file with the commissioner a financial
3 report summarizing its raffle operations within thirty
4 days after the expiration date of such license. The time
5 period covered by an annual report is the full license
6 year or, at the election of a licensee receiving state or
7 federal funding, the most recently ended state or federal
8 fiscal year.

9 The reports required by this section shall contain the
10 name, address and social security number of any individ-
11 ual who received during the course of a raffle occasion
12 prizes the aggregate value of which exceeded one hun-
13 dred dollars, and other information required by the
14 commissioner: *Provided*, That any licensee failing to file
15 such report when due shall be liable for a penalty of

16 twenty-five dollars for each month or fraction thereof
17 during which the failure continues, such penalty not to
18 exceed one hundred dollars: *Provided, however,* That
19 annual financial reports for license years ending after
20 the first day of July, one thousand nine hundred
21 ninety-three, must contain a compilation and review of
22 such financial report by a certified or licensed public
23 accountant, or may be audited by a certified or licensed
24 public accountant, if a licensee's gross receipts exceed
25 fifty thousand dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) "Commissioner" means tax commissioner of the
3 state of West Virginia, or his delegate.

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

7 (c) "Person" means any individual, association, society,
8 incorporated or unincorporated organization, firm
9 partnership or other nongovernmental entity or institu-
10 tion.

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

16 (e) "Charitable raffle board" or "charitable raffle
17 game" means: (1) A board or other device that has many
18 folded printed slips to be pulled from the board or
19 otherwise distributed without a board on payment of a
20 nominal sum in an effort to obtain a slip or chance that
21 entitles the player to a designated prize; (2) a series of
22 paper cards with perforated break-open tabs, a face
23 value of which is covered or otherwise hidden from view
24 to conceal one or more numbers, letters or symbols,

25 which, on payment of a nominal sum, entitles the player
26 to obtain a chance to a designated prize; or (3) such other
27 similar game which may be defined by the state tax
28 commissioner by legislative rule.

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

31 (g) "Verification" means a unique manufacture identi-
32 fiable serial number which is required to be printed on
33 each ticket in a charitable raffle board or charitable
34 raffle game or such other form of identification as may
35 be prescribed by the tax commissioner upon a showing
36 of undue hardship by the taxpayer: *Provided*, That such
37 other form of identification shall be prescribed by rule in
38 accordance with the provisions of article three, chapter
39 twenty-nine-a of this code.

40 (h) "Wholesaler" or "distributor" means any person or
41 entity engaged in the wholesale distribution of charita-
42 ble raffle boards or games or similar boards or devices,
43 as defined by the commissioner, and licensed under the
44 provisions of this article, to distribute said devices to
45 charitable raffle boards or games retailers as defined in
46 this article. It also includes anyone who is engaged in
47 the manufacturing, packaging, preparing or repackaging
48 of charitable raffle boards or games for distribution in
49 this state: *Provided*, That no license taxes or other fees
50 provided for in this section may be charged to any
51 newspaper or other printing or duplicating operation not
52 regularly engaged in the business of manufacturing,
53 packaging, preparing or repackaging charitable raffle
54 boards or games where the gross sales of such printing or
55 duplicating operation from such activity does not exceed
56 seven thousand five hundred dollars per calendar year
57 and who is donating such items or services to a nonprofit
58 entity without compensation may not be considered a
59 "wholesaler" or "distributor" under this article.

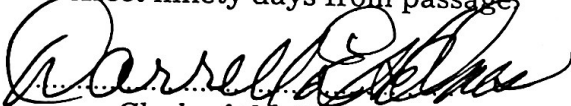
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

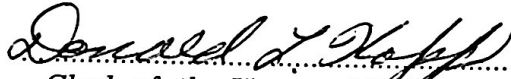

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Chairman Senate Committee


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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within this the.....
day of, 1995.

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Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 3:44 pm