WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1999

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ENROLLED

House Bill No. 106

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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Passed March 22, 1999

In Effect from Passage
AN ACT to amend article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one; and to amend article twenty-one of said chapter by adding thereto a new section, designated section thirty, all relating to charitable bingo and raffles; creating additional sanctions and authorizing the state tax commissioner to impose the additional sanctions upon licensees of charitable bingo or charitable raffles; providing for civil monetary penalties and fees; exempting certain licensees from sanctions under certain circumstances; and providing for disposition of fines, money penalties and fees.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-one; and that article twenty-one of said chapter be amended by adding thereto a new section, designated section thirty, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§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 two thousand dollars. 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 one hundred dollars 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 five hundred dollars and may not exceed two times the annual gross proceeds of the licensee. Application of this subdivision (6) 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 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 (a): 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 filing a written protest with the
commissioner, either in person or by certified mail, within twenty days after the licensee is served with a copy of the order.

(3) When a written protest is filed timely, the provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may by procedural rule specify the form and content of a written protest.

(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.

ARTICLE 21. CHARITABLE RAFFLES.

§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 two thousand dollars. 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
one hundred dollars 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 commis-
sioner: 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 five hundred dollars and may not exceed two times the
annual gross proceeds of the licensee. Application of this
subdivision (6) 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 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 (a): 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 filing a written protest with the commissioner, either in person or by certified mail, within twenty days after the licensee is served with a copy of the order.

(3) When a written protest is filed timely, the provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may by procedural rule specify the form and content of a written protest.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 21st day of April, 1999.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/5/99
Time 11:05 AM