

RECEIVED

99 APR -7 PM 12 33

OFFICE OF THE CLERK  
SENATE

**WEST VIRGINIA LEGISLATURE**

**FIRST EXTRAORDINARY SESSION, 1999**



**ENROLLED**

**House Bill No. 106**

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



Passed March 22, 1999

In Effect from Passage

HB 106

RECEIVED

99 APR -7 PM 12:33

SECRET  
SUPER

## ENROLLED

# H. B. 106

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

---

[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.**

1 (a) *Additional remedies.* —Notwithstanding any provision  
2 of this article to the contrary, the commissioner may:

3 (1) Revoke or refuse to renew any license issued under this  
4 article for any material violation of the provisions of this article  
5 or legislative rules of the commissioner promulgated for this  
6 article;

7 (2) Suspend the license of any licensee for the period of  
8 time the commissioner deems appropriate, not to be less than  
9 one week nor more than twelve months, for any material  
10 violation of the provisions of this article or legislative rule of  
11 the commissioner promulgated for this article;

12 (3) Place a licensee on probation for not less than six  
13 months nor more than five years: *Provided*, That in the event a  
14 licensee is placed on probation, as a condition of the probation,  
15 the licensee shall pay to the commissioner a probation supervi-  
16 sion fee in an amount equal to two percent of the gross proceeds  
17 derived by the licensee from the conduct of bingo occasions  
18 during the period of the suspension, but, in no event, may the  
19 probation supervision fee be less than two thousand dollars. All  
20 probation supervision fee revenue shall be placed in a special  
21 account and used by the commissioner, after appropriation by  
22 the Legislature, to offset the expenses and costs incurred by the  
23 tax division to supervise the licensee;

24 (4) Require a licensee to replace any officer who knew or  
25 should have known of a material violation of the provisions of  
26 this article or legislative rules of the commissioner promulgated  
27 for this article;

28 (5) Require a licensee to prohibit one or more members,  
29 supporters, volunteers or employees of the licensee involved in  
30 acts of material violation of the provisions of this article or  
31 legislative rules of the commissioner promulgated for this  
32 article, from all future bingo occasions held under the license,  
33 or for the period of time specified by the commissioner;

34 (6) Impose a civil money penalty in an amount not less than  
35 one hundred dollars nor more than two times the annual gross  
36 proceeds derived by the licensee, for each material violation of

37 the provisions of this article or legislative rules of the commis-  
38 sioner: *Provided*, That in setting any monetary penalty for a  
39 first offense, the commissioner shall take into consideration the  
40 ability of the licensee to continue to exist and operate. For each  
41 material violation which is a second or subsequent offense, the  
42 amount of the civil penalty that may be imposed may not be  
43 less than five hundred dollars and may not exceed two times the  
44 annual gross proceeds of the licensee. Application of this  
45 subdivision (6) and the amount of civil money penalty levied  
46 shall be determined in accordance with a legislative rule  
47 promulgated by the commissioner pursuant to article three,  
48 chapter twenty-nine-a of this code. The commissioner may file  
49 this rule as an emergency rule. Any licensee aggrieved by the  
50 amount of the civil penalty may surrender its license, or, after  
51 exhausting all administrative remedies, have the matter  
52 reviewed in the circuit court of the county where the offense  
53 giving rise to the civil penalty occurred; or

54 (7) Order any one or more, or any combination, of the  
55 penalties provided for in subdivisions (1) through (6) of this  
56 subsection (a): *Provided*, That no sanctions or other remedy  
57 shall be imposed under this article on a licensee which is  
58 exempt or qualified to be exempt from federal income taxation  
59 under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue  
60 Code of 1986, as amended, but does not have bona fide  
61 members, due to failure to operate bingo occasions with  
62 members if the occasions are or were operated by residents of  
63 this state who have been employed by the licensee or been  
64 meaningfully associated with the licensee for one or more years  
65 before the date of the licensee's application for a license under  
66 this article, or its last application for renewal of a license under  
67 this article.

68 (b) *Administrative procedures.*

69 (1) An order issued under this section shall be served by  
70 certified mail or in the manner provided in rule 4(d) of the West  
71 Virginia rules of civil procedure for trial courts of record, as  
72 amended.

73 (2) A licensee may appeal an order of the commissioner  
74 issued under this section by filing a written protest with the

75 commissioner, either in person or by certified mail, within  
76 twenty days after the licensee is served with a copy of the order.

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

81 (4) The burden of proof in any administrative or court  
82 proceeding is on the licensee to show cause why the order of  
83 the commissioner under this section should be modified, in  
84 whole or in part, or set aside.

85 (c) *Deposit of money penalties.* —All fines, money penal-  
86 ties and fees imposed pursuant to this section, except the  
87 probation supervision fee imposed by subdivision (3), subsec-  
88 tion (a) of this section, shall be deposited into the general  
89 revenue fund of this state.

#### ARTICLE 21. CHARITABLE RAFFLES.

##### **§47-21-30. Additional remedies for the commissioner; adminis- trative procedures; deposit of money penalties.**

1 (a) *Additional remedies.* —Notwithstanding any provision  
2 of this article to the contrary, the commissioner may:

3 (1) Revoke or refuse to renew any license issued under this  
4 article for any material violation of the provisions of this article  
5 or legislative rules of the commissioner promulgated for this  
6 article;

7 (2) Suspend the license of any licensee for the period of  
8 time the commissioner deems appropriate, not to be less than  
9 one week nor more than twelve months, for any material  
10 violation of the provisions of this article or legislative rule of  
11 the commissioner promulgated for this article;

12 (3) Place a licensee on probation for not less than six  
13 months nor more than five years: *Provided*, That in the event a  
14 licensee is placed on probation, as a condition of the probation,  
15 the licensee shall pay to the commissioner a probation supervi-  
16 sion fee in an amount equal to two percent of the gross proceeds  
17 derived by the licensee from the conduct of raffle occasions

18 during the period of the suspension, but, in no event, may the  
19 probation supervision fee be less than two thousand dollars. All  
20 probation supervision fee revenue shall be placed in a special  
21 account and used by the commissioner, after appropriation by  
22 the Legislature, to offset the expenses and costs incurred by the  
23 tax division to supervise the licensee;

24 (4) Require a licensee to replace any officer who knew or  
25 should have known of a material violation of the provisions of  
26 this article or legislative rules of the commissioner promulgated  
27 for this article;

28 (5) Require a licensee to prohibit one or more members,  
29 supporters, volunteers or employees of the licensee involved in  
30 acts of material violation of the provisions of this article or  
31 legislative rules of the commissioner promulgated for this  
32 article, from all future raffle occasions held under the license,  
33 or for the period of time specified by the commissioner;

34 (6) Impose a civil money penalty in an amount not less than  
35 one hundred dollars nor more than two times the annual gross  
36 proceeds derived by the licensee, for each material violation of  
37 the provisions of this article or legislative rules of the commis-  
38 sioner: *Provided*, That in setting any monetary penalty for a  
39 first offense, the commissioner shall take into consideration the  
40 ability of the licensee to continue to exist and operate. For each  
41 material violation which is a second or subsequent offense, the  
42 amount of the civil penalty that may be imposed may not be  
43 less than five hundred dollars and may not exceed two times the  
44 annual gross proceeds of the licensee. Application of this  
45 subdivision (6) and the amount of civil money penalty levied  
46 shall be determined in accordance with a legislative rule  
47 promulgated by the commissioner pursuant to article three,  
48 chapter twenty-nine-a of this code. The commissioner may file  
49 this rule as an emergency rule. Any licensee aggrieved by the  
50 amount of the civil penalty may surrender its license, or, after  
51 exhausting all administrative remedies, have the matter  
52 reviewed in the circuit court of the county where the offense  
53 giving rise to the civil penalty occurred; or

54 (7) Order any one or more, or any combination, of the  
55 penalties provided for in subdivisions (1) through (6) of this  
56 subsection (a): *Provided*, That no sanctions or other remedy  
57 shall be imposed under this article on a licensee which is  
58 exempt or qualified to be exempt from federal income taxation  
59 under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue  
60 Code of 1986, as amended, but does not have bona fide  
61 members, due to failure to operate raffle occasions with  
62 members if the occasions are or were operated by residents of  
63 this state who have been employed by the licensee or been  
64 meaningfully associated with the licensee for one or more years  
65 before the date of the licensee's application for a license under  
66 this article, or its last application for renewal of a license under  
67 this article.

68 (b) *Administrative procedures.*

69 (1) An order issued under this section shall be served by  
70 certified mail or in the manner provided in rule 4(d) of the West  
71 Virginia rules of civil procedure for trial courts of record, as  
72 amended.

73 (2) A licensee may appeal an order of the commissioner  
74 issued under this section by filing a written protest with the  
75 commissioner, either in person or by certified mail, within  
76 twenty days after the licensee is served with a copy of the order.

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

81 (4) The burden of proof in any administrative or court  
82 proceeding is on the licensee to show cause why the order of  
83 the commissioner under this section should be modified, in  
84 whole or in part, or set aside.

85 (c) *Deposit of money penalties.* —All fines, money penal-  
86 ties and fees imposed pursuant to this section, except the  
87 probation supervision fee imposed by subdivision (3), subsec-  
88 tion (a) of this section, shall be deposited into the general  
89 revenue fund of this state.

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

*Paul Schoover*

Chairman Senate Committee

*Joe F. Smith*

Chairman House Committee

Originating in the House.

Takes effect from passage.

*Harold Klukas*

Clerk of the Senate

*Gregory A. Bay*

Clerk of the House of Delegates

*Carl Ray Tomblin*

President of the Senate

*[Signature]*

Speaker of the House of Delegates

The within approved this the 7th  
day of April, 1999.

*[Signature]*

Governor



PRESENTED TO THE

GOVERNOR

Date 4/5/99

Time 11:05 AM