

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SB 577

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 577

(SENATOR KESSLER, *original sponsor*)

[Passed March 13, 2010; in effect from passage.]

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[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, all relating to raffles; revising the definition of “raffle”; providing for criminal and civil penalties, license suspension and revocation; and authorizing forfeiture and destruction of property.

Be it enacted by the Legislature of West Virginia:

That §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

- 1 For purposes of this article, unless specified otherwise:
- 2 (a) “Charitable or public service activity or endeavor”
- 3 means any bona fide activity or endeavor which directly
- 4 benefits a number of people by:

5 (1) Contributing to educational or religious purposes; or

6 (2) Relieving them from disease, distress, suffering,
7 constraint or the effects of poverty; or

8 (3) Increasing their comprehension of and devotion to
9 the principles upon which this nation was founded and to
10 the principles of good citizenship; or

11 (4) Making them aware of or educating them about
12 issues of public concern so long as the activity or endeavor
13 is not aimed at supporting or participating in the cam-
14 paign of any candidate for public office; or

15 (5) By lessening the burdens borne by government or
16 voluntarily supporting, augmenting or supplementing
17 services which government would normally render to the
18 people; or

19 (6) Providing or supporting nonprofit community
20 activities for youth, senior citizens or the disabled; or

21 (7) Providing or supporting nonprofit cultural or artistic
22 activities; or

23 (8) Providing or supporting any political party executive
24 committee.

25 (b) "Charitable or public service organization" means a
26 bona fide, not for profit, tax-exempt, benevolent, educa-
27 tional, philanthropic, humane, patriotic, civic, religious,
28 fraternal or eleemosynary incorporated or unincorporated
29 association or organization; or a volunteer fire depart-
30 ment, rescue unit or other similar volunteer community
31 service organization or association; but does not include
32 any nonprofit association or organization, whether
33 incorporated or not, which is organized primarily for the
34 purposes of influencing legislation or supporting or
35 promoting the campaign of any single candidate for public
36 office.

37 (c) "Commissioner" means the State Tax Commissioner.

38 (d) "Concession" means any stand, booth, cart, counter
39 or other facility, whether stationary or movable, where
40 beverages, both alcoholic and nonalcoholic, food, snacks,
41 cigarettes or other tobacco products, newspapers, souve-
42 nirs or any other items are sold to patrons by an individual
43 operating the facility. Notwithstanding anything con-
44 tained in subdivision (2), subsection (a), section twelve,
45 article seven, chapter sixty of this code to the contrary,
46 "concession" includes beverages which are regulated by
47 and shall be subject to the provisions of chapter sixty of
48 this code.

49 (e) "Conduct" means to direct the actual holding of a
50 raffle by activities including, but not limited to, handing
51 out tickets, collecting money, drawing the winning
52 numbers or names, announcing the winning numbers or
53 names, posting the winning numbers or names, verifying
54 winners and awarding prizes.

55 (f) "Expend net proceeds for charitable or public service
56 purposes" means to devote the net proceeds of a raffle
57 occasion or occasions to a qualified recipient organization
58 or as otherwise provided by this article and approved by
59 the commissioner pursuant to section fifteen of this article.

60 (g) "Gross proceeds" means all moneys collected or
61 received from the conduct of a raffle or raffles at all raffle
62 occasions held by a licensee during a license period; this
63 term shall not be deemed to include any moneys collected
64 or received from the sale of concessions at raffle occasions.

65 (h) "Joint raffle occasion" means a single gathering or
66 session at which a series of one or more successive raffles
67 is conducted by two or more licensees.

68 (i) "Licensee" means any organization or association
69 granted an annual or limited occasion license pursuant to
70 the provisions of this article.

71 (j) "Net proceeds" means all moneys collected or re-
72 ceived from the conduct of raffle or raffles at occasions
73 held by a licensee during a license period after payment of
74 the raffle expenses authorized by sections eleven, thirteen
75 and fifteen of this article; this term shall not be deemed to
76 include moneys collected or received from the sale of
77 concessions at raffle occasions.

78 (k) "Person" means any individual, association, society,
79 incorporated or unincorporated organization, firm,
80 partnership or other nongovernmental entity or institu-
81 tion.

82 (l) "Patron" means any individual who attends a raffle
83 occasion other than an individual who is participating in
84 the conduct of the occasion or in the operation of any
85 concession, whether or not the individual is charged an
86 entrance fee or participates in any raffle.

87 (m) "Qualified recipient organization" means any bona
88 fide, not for profit, tax-exempt, as defined in subdivision
89 (p) of this section, incorporated or unincorporated associa-
90 tion or organization which is organized and functions
91 exclusively to directly benefit a number of people as
92 provided in subparagraphs (1) through (7), subdivision (a)
93 of this section. "Qualified recipient organization" in-
94 cludes, without limitation, any licensee which is organized
95 and functions exclusively as provided in this subdivision.

96 (n) "Raffle" means a game involving the selling or
97 distribution of paper tickets, not enhanced or aided by the
98 use of any electronic or mechanical raffle ticket dispenser,
99 raffle ticket reader or other electronic or mechanical
100 device of whatever design or function, entitling the holder
101 or holders to participate in a raffle game for a chance on
102 a prize or prizes. This subsection shall not be interpreted
103 to prevent the use of:

104 (1) Hand cranked or motorized drum mixers which
105 randomly mix tickets or other indicia together for the
106 purpose of allowing the hand drawing of a ticket or
107 winning indicia.

108 (2) A cash register for handling proceeds of sales and
109 other ordinary cash handling and recordkeeping functions
110 of a raffle licensee.

111 (3) Accounting and recordkeeping software for the
112 purpose of maintaining accounting and reporting records
113 of the licensee, and the computer for running those
114 applications, not used in the play of any game.

115 (o) "Raffle occasion" or "occasion" means a single
116 gathering or session at which a series of one or more
117 successive raffles is conducted by a single licensee.

118 (p) "Tax-exempt association or organization" means an
119 association or organization which is, and has received
120 from the "Internal Revenue Service" a determination
121 letter that is currently in effect stating that the organiza-
122 tion is exempt from federal income taxation under subsec-
123 tion 501(a) and described in subsection 501(c)(3), 501(c)(4),
124 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal
125 Revenue Code of 1986, as amended; or is exempt from
126 income taxes under subsection 527(a) of said code.

**§47-21-20. Violation of provisions; crime; civil penalties;
additional grounds for suspension or revocation.**

1 (a) Any person who knowingly violates any provisions of
2 this article, other than the provisions of sections eighteen
3 or nineteen, or subsection (b) of this section, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined
5 not less than \$100 nor more than \$1,000; and, upon a
6 second or subsequent conviction thereof, shall be fined not
7 less than \$100 nor more than \$100,000 or confined in jail
8 not more than one year or both fined and confined.

9 (b) On and after July 1, 2010, any person licensed under
10 this article, or any person who operates a raffle without a
11 license under section three of this article, who is in
12 possession of any electronic or mechanical raffle ticket
13 dispenser, raffle ticket reader or other electronic or
14 mechanical device of whatever design or function, other
15 than those machines and apparatus allowed under subsec-
16 tion (n) of section two of this article, that is used or
17 designed to be used as part of a licensed raffle is guilty of
18 a felony and, upon conviction thereof, shall be imprisoned
19 in a state correctional facility for a term of not less than
20 one year nor more than three years, and fined not less than
21 \$50,000 nor more than \$100,000, for each electronic or
22 mechanical raffle ticket dispenser, raffle ticket reader or
23 other electronic or mechanical device of whatever design
24 or function, other than those machines and apparatus
25 allowed under subsection (n) of section two of this article,
26 in the person's actual or constructive possession in this
27 state. For a person other than an individual, upon convic-
28 tion, the fine may not be less than \$100,000 nor more than
29 \$500,000 for each video electronic or mechanical raffle
30 ticket dispenser, raffle ticket reader or other electronic or
31 mechanical device of whatever design or function in the
32 person's actual or constructive possession in this state.

33 (c) A licensee may also have his or her license suspended
34 or revoked for failure to comply with this article and may
35 be required to forfeit the machines or devices to the Tax
36 Commissioner for destruction.

37 (d) In addition to any other penalty provided by law, any
38 person, licensed or unlicensed under this article, who
39 violates any provisions of this article, or who fails to
40 perform any of the duties or obligations created and
41 imposed upon them by the provisions of this article, other
42 than the provisions of sections eighteen or nineteen of this
43 article, or subsection (b) of this section, is subject to a civil

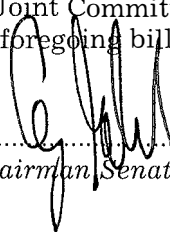
7 [Enr. Com. Sub. for S. B. No. 577

44 penalty as may be determined by the Tax Commissioner in
45 an amount not to exceed \$10,000.

A handwritten signature in black ink, appearing to be "John D. [unclear]", located at the bottom of the page.

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

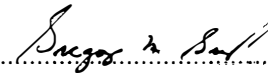

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Chairman Senate Committee

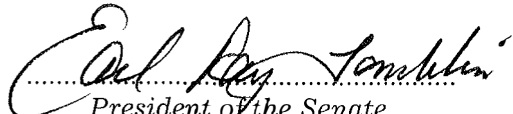

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Chairman House Committee


Originated in the Senate.

In effect from passage.

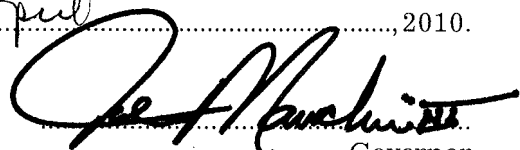

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Clerk of the Senate


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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 *is approved* this the *2nd*
April
Day of 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:25 AM