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.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 577

(SENRATOR KESSLER, original sponsor)

[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:
(1) Contributing to educational or religious purposes; or
(2) Relieving them from disease, distress, suffering, constraint or the effects of poverty; or
(3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or
(4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office; or
(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or
(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or
(7) Providing or supporting nonprofit cultural or artistic activities; or
(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.
(c) "Commissioner" means the State Tax Commissioner.

(d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and shall be subject to the provisions of chapter sixty of this code.

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

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

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

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

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.
(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by sections eleven, thirteen and fifteen of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

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

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a) of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper tickets, not enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes. This subsection shall not be interpreted to prevent the use of:
5 [Enr. Com. Sub. for S. B. No. 577

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

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

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

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

118 (p) "Tax-exempt association or organization" means an association or organization which is, and has received from the "Internal Revenue Service" a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from 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 this article, other than the provisions of sections eighteen or nineteen, or subsection (b) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than $100 nor more than $100,000 or confined in jail not more than one year or both fined and confined.
9 (b) On and after July 1, 2010, any person licensed under this article, or any person who operates a raffle without a license under section three of this article, who is in possession of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, other than those machines and apparatus allowed under subsection (n) of section two of this article, that is used or designed to be used as part of a licensed raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than $50,000 nor more than $100,000, for each electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, other than those machines and apparatus allowed under subsection (n) of section two of this article, in the person's actual or constructive possession in this state. For a person other than an individual, upon conviction, the fine may not be less than $100,000 nor more than $500,000 for each video electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function in the person's actual or constructive possession in this state.

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

(d) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of sections eighteen or nineteen of this article, or subsection (b) of this section, is subject to a civil
44 penalty as may be determined by the Tax Commissioner in
45 an amount not to exceed $10,000.
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... day of April, 2010.

Governor
PRESENTED TO THE GOVERNOR

APR 01 2010

Time 11:25 AM