

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 263

BY SENATORS HAMILTON, PHILLIPS, ROMANO,

WOODRUM, CAPUTO, AND LINDSAY

[Passed April 10, 2021; in effect from passage]

1 AN ACT to amend and reenact §47-20-2 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §47-20-15 of said code; to amend and reenact §47-21-2 of said code;
3 and to amend and reenact §47-21-15 of said code, all relating to charitable bingo and
4 chartable raffles generally; authorizing charitable and public service organizations to raise
5 funds by conducting raffles and bingo virtually over the Internet and authorizing
6 reasonable, necessary, and actual expenses in operating charitable bingo and lottery
7 occasions to not exceed 40 percent of gross proceeds; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. CHARITIBLE BINGO.

§47-20-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) "Bingo" means the game wherein participants pay consideration for the use of one or
3 more paper or virtual cards bearing several rows of numbers in which no two cards played in any
4 one game contain the same sequence or pattern. When the game commences, numbers are
5 selected by chance, one by one, and announced. The players cover or mark those numbers
6 announced as they appear on the card or cards which they are using. The player who first
7 announces that he or she has covered a predetermined sequence or pattern which had been
8 preannounced for that game is, upon verification that he or she has covered the predetermined
9 sequence or pattern, declared the winner of that game. Bingo, as authorized by this article, may
10 be operated and played virtually over the Internet using an online bingo software system or web
11 application.

12 (b) "Bingo occasion" or "occasion" means a single gathering or session at which a series
13 of one or more successive bingo games is conducted by a single licensee.

14 (c) "Charitable or public service activity or endeavor" means any bona fide activity or
15 endeavor which directly benefits a number of people by:

16 (1) Assisting them to establish themselves in life as contributing members of society

17 through education or religion;

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

19 (3) Increasing their comprehension of, and devotion to, the principles upon which this
20 nation was founded and to the principles of good citizenship;

21 (4) Making them aware of, or educating them about, issues of public concern so long as
22 the activity or endeavor is not aimed at influencing legislation or supporting or participating in the
23 campaign of any candidate for public office;

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

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

28 (7) Providing or supporting nonprofit cultural or artistic activities.

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

36 An organization or association is tax-exempt if it is, and has received from the Internal
37 Revenue Service a determination letter that is currently in effect stating that the organization is,
38 exempt from federal income taxation under subsection 501(a) and described in subsection
39 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code.

40 (e) "Commissioner" means the State Tax Commissioner.

41 (f) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary
42 or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other

43 tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual
44 operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the
45 contrary, “concession” includes beverages which are regulated by, and are subject to, the
46 provisions of chapter 60 of this code: *Provided*, That in no case may the sale or the consumption
47 of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted.

48 (g) “Conduct” means to direct the actual playing of a bingo game by activities including,
49 but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the
50 numbers, posting the numbers, verifying winners, and awarding prizes.

51 (h) “Expend net proceeds for charitable or public service purposes” means to devote the
52 net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise
53 provided by this article and approved by the commissioner pursuant to §47-20-15 of this code.

54 (i) “Gross proceeds” means all moneys collected or received from the conduct of bingo at
55 all bingo occasions held by a licensee during a license period; this term shall not be considered
56 to include any moneys collected or received from the sale of concessions at bingo occasions.

57 (j) “Joint bingo occasion” means a single gathering or session at which a series of one or
58 more successive bingo games is conducted by two or more licensees.

59 (k) “Licensee” means any organization or association granted an annual, limited occasion,
60 or state fair bingo license pursuant to the provisions of this article.

61 (l) “Net proceeds” means all moneys collected or received from all the conduct of bingo at
62 bingo occasions held by a licensee during a license period after payment of expenses authorized
63 by §47-20-10, §47-20-13, §47-20-15, and §47-20-22 of this code; this term shall not be
64 considered to include moneys collected or received from the sale of concessions at bingo
65 occasions.

66 (m) “Person” means any individual, association, society, incorporated or unincorporated
67 organization, firm, partnership, or other nongovernmental entity or institution.

68 (n) “Patron” means any individual who attends a bingo occasion other than an individual

69 who is participating in the conduct of the occasion or in the operation of any concession, whether
70 or not the individual is charged an entrance fee or plays any bingo games.

71 (o) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as
72 defined in subdivision (d) of this subsection, incorporated or unincorporated association or
73 organization which is organized and functions exclusively to directly benefit a number of people
74 as provided in paragraphs (1) through (7), inclusive, subdivision (c) of this subsection. "Qualified
75 recipient organization" includes without limitation any licensee which is organized and functions
76 exclusively as provided in this subdivision.

77 (p) "Venue" means the location in which bingo occasions are held.

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

1 (a) The reasonable, necessary and actual expenses incurred in connection with the
2 conduct of bingo occasions, not to exceed 40 percent of the gross proceeds collected during a
3 license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not
4 limited to:

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

9 (2) The cost of custodial services;

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

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

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

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

17 proceeds.

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

20 (c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided
21 through any concession to the patrons may not be paid for out of the gross proceeds from the
22 bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned on the
23 proceeds for the charitable or public service purposes stated in the application within one year
24 after the expiration of the license under which the bingo occasions were conducted. A licensee
25 which does not qualify as a qualified recipient organization may apply to the commissioner at the
26 time it applies for a bingo license or as provided in subsection (e) of this section for permission to
27 apply any or all of its net proceeds to directly support a charitable or public service activity or
28 endeavor which it sponsors.

29 (d) No gross proceeds from any bingo operation may be devoted or in any manner used
30 by any licensee or qualified recipient organization for the construction or acquisition of real or
31 personal property except that which is used exclusively for one or more charitable or public service
32 purposes or as provided in subdivision (3), subsection (a) of this section.

33 (e) The Tax Commissioner has the authority to disapprove any contract for sale of goods
34 or services to any charitable bingo licensee for use in or with relation to any charitable bingo
35 operation or occasion, or any lease of real or tangible personal property to any charitable bingo
36 licensee for use in or with relation to any charitable bingo operation or occasion, if the contract or
37 lease is unreasonable or not representative of fair market value. Contracts or leases which are
38 disapproved shall be considered to be in contravention of this article, and are void. Any attempt
39 by any charitable bingo licensee to engage in transactions under the terms of any lease or contract
40 that has been disapproved is grounds for revocation or suspension of the charitable bingo license
41 and for refusal by the Tax Commissioner to renew the charitable bingo license.

42 (f) If a property owner or lessee, including his or her agent, has entered into a rental

43 contract to hold super bingo occasions on his or her premises, the premises shall be rented, for
44 super bingo occasions, to not more than four super bingo licensees during any period of four
45 consecutive calendar weeks: *Provided*, That each of the charitable or public service organizations
46 desiring to hold a super bingo occasion must possess its own super bingo license. Subject to this
47 limitation, the premises may be used for super bingo occasions during two consecutive days
48 during a conventional weekend. For purposes of this subsection, the term “conventional weekend”
49 means Saturday and Sunday: *Provided, however*, That the super bingo occasions may occur at
50 the same facility no more often than alternating weekends during a calendar month.

51 (g) Any licensee which, in good faith, finds itself unable to comply with the requirements
52 of this provision shall apply to the commissioner for permission to expend its net proceeds for one
53 or more charitable or public service purposes other than that stated in its license application or
54 for permission to expend its net proceeds later than the one-year time period specified in this
55 section. The application shall be on a form furnished by the commissioner and shall include the
56 particulars of the requested changes and the reasons for the changes. The application shall be
57 filed no later than 60 days before the end of the one-year period specified in this section. In the
58 case of an application to extend the time in which the net proceeds are to be expended for a
59 charitable or public service purpose, the licensee shall file such periodic reports with the
60 commissioner as the commissioner directs until the proceeds are expended.

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” means any bona fide activity or
3 endeavor which directly benefits a number of people by:

4 (1) Contributing to educational or religious purposes;

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

6 (3) Increasing their comprehension of, and devotion to, the principles upon which this

7 nation was founded and to the principles of good citizenship;

8 (4) Making them aware of, or educating them about, issues of public concern so long as
9 the activity or endeavor is not aimed at supporting or participating in the campaign of any
10 candidate for public office;

11 (5) Lessening the burdens borne by government or voluntarily supporting, augmenting, or
12 supplementing services which government would normally render to the people;

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

15 (7) Providing or supporting nonprofit cultural or artistic activities; or

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

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

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

25 (d) "Concession" means any stand, booth, cart, counter, or other facility, whether
26 stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes
27 or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an
28 individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code
29 to the contrary, "concession" includes beverages which are regulated by and are subject to the
30 provisions of chapter 60 of this code.

31 (e) "Conduct" means to direct the actual holding of a raffle by activities including, but not
32 limited to, handing out tickets, collecting money, drawing the winning numbers or names,

33 announcing the winning numbers or names, posting the winning numbers or names, verifying
34 winners, and awarding prizes.

35 (f) "Expend net proceeds for charitable or public service purposes" means to devote the
36 net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise
37 provided by this article and approved by the commissioner pursuant to §47-21-15 of this code.

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

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

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

46 (j) "Net proceeds" means all moneys collected or received from the conduct of raffle or
47 raffles at occasions held by a licensee during a license period after payment of the raffle expenses
48 authorized by §47-21-11, §47-21-13, and §47-21-15 of this code; this term shall not be determined
49 to include moneys collected or received from the sale of concessions at raffle occasions.

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

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

55 (m) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as
56 defined in subdivision (p) of this subsection, incorporated or unincorporated association or
57 organization which is organized and functions exclusively to directly benefit a number of people
58 as provided in paragraphs (1) through (7), inclusive, subdivision (a) of this subsection. "Qualified

59 recipient organization” includes, without limitation, any licensee which is organized and functions
60 exclusively as provided in this subdivision.

61 (n) “Raffle” means a game involving the selling or distribution of paper or virtual tickets,
62 entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes:
63 *Provided*, That any mechanical or electronic raffle ticket system of whatever design or function is
64 prohibited except as provided in paragraph (2) of this subdivision. This subdivision shall not be
65 interpreted to prevent the use of:

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

68 (2) Mechanical or electronic ticket dispenser systems that produce paper tickets with
69 randomly generated indicia that cannot be redeemed electronically, cannot be used for any other
70 purpose than a one-time raffle, and are limited as follows:

71 (A) No more than three electronic ticket dispensing units in facilities with a capacity of
72 fewer than 3,000 people; or

73 (B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted
74 in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10
75 dispensing units;

76 (3) A cash register for handling proceeds of sales and other ordinary cash-handling and
77 record-keeping functions of a raffle licensee;

78 (4) Accounting and record-keeping software for the purpose of maintaining accounting
79 and reporting records of the licensee, and the computer for running those applications; or

80 (5) An online raffle software system, web application, method, or process for the purpose
81 of conducting online raffles over the Internet.

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

84 (p) “Tax-exempt association or organization” means an association or organization which

85 is, and has received from the Internal Revenue Service a determination letter that is currently in
86 effect stating that the organization is, exempt from federal income taxation under subsection
87 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or
88 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under
89 subsection 527(a) of that code.

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

1 (a) The reasonable, necessary and actual expenses incurred in connection with the
2 conduct of raffle occasions, not to exceed 40 percent of the gross proceeds collected during a
3 license period, may be paid out of the gross proceeds of the conduct of the raffle, including, but
4 not limited to:

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

9 (2) The cost of custodial services;

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

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

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

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

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

20 (c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided

21 through any concession to the patrons may not be paid for out of the gross proceeds from the
22 raffle occasion. The licensee shall expend all net raffle proceeds and any interest earned on the
23 net raffle proceeds for the charitable or public service purposes stated in the application within
24 one year after the expiration of the license under which the raffle occasions were conducted. A
25 licensee which does not qualify as a qualified recipient organization may apply to the
26 commissioner at the time it applies for a raffle license or as provided in subsection (e) of this
27 section for permission to apply any or all of its net proceeds to directly support a charitable or
28 public service activity or endeavor which it sponsors.

29 (d) No gross proceeds from any raffle operation may be devoted or in any manner used
30 by any licensee or qualified recipient organization for the construction, acquisition, or
31 improvement, of real or personal property except that which is used exclusively for one or more
32 charitable or public service purposes or as provided in subdivision (3), subsection (a) of this
33 section.

34 (e) The Tax Commissioner has the authority to disapprove any contract for sale of goods
35 or services to any charitable raffle licensee for use in or with relation to any charitable raffle
36 operation or occasion, or any lease of real or tangible personal property to any charitable raffle
37 licensee for use in or with relation to any charitable raffle operation or occasion, if the contract or
38 lease is unreasonable or not representative of fair market value. Disapproved contracts or leases
39 shall be considered to be in contravention of this article, and are void. Any attempt by any
40 charitable raffle licensee to engage in transactions under the terms of any disapproved lease or
41 contract is grounds for revocation or suspension of the charitable raffle license and for refusal by
42 the Tax Commissioner to renew the charitable raffle license.

43 (f) Any licensee which, in good faith, finds itself unable to comply with the requirements of
44 the subsections (a) through (e) of this section shall apply to the commissioner for permission to
45 expend its net proceeds for one or more charitable or public service purposes other than that
46 stated in its license application or for permission to expend its net proceeds later than the one-

47 year time period specified in this section. The application shall be on a form furnished by the
48 commissioner and shall include the particulars of the requested changes and the reasons for the
49 changes. The application shall be filed no later than 60 days before the end of the one-year period
50 specified in this section. In the case of an application to extend the time in which the net proceeds
51 are to be expended for a charitable or public service purpose, the licensee shall file such periodic
52 reports with the commissioner as the commissioner directs until the proceeds are expended.

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 of the House of Delegates

The within this the.....
Day of, 2021.

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Governor