

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 751

BY SENATOR BARRETT

[Originating in the Committee on Government
Organization; reported February 23, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §47-21A-101, §47-21A-102, §47-21A-103, §47-21A-104, §47-21A-105, §47-
3 21A-106, §47-21A-107, §47-21A-108, §47-21A-109, §47-21A-110, §47-21A-111, §47-
4 21A-112, §47-21A-113, §47-21A-114, §47-21A-115, §47-21A-116, §47-21A-117, §47-
5 21A-118, §47-21A-119, §47-21A-120, §47-21A-121, §47-21A-122, §47-21A-123, §47-
6 21A-124, §47-21A-125, §47-21A-126, §47-21A-127, §47-21A-128, §47-21A-129, and
7 §47-21A-130, all relating to creating online charitable raffles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. ONLINE CHARITABLE RAFFLES.

§47-21A-101. Legislative intent.

1 The Legislature, in recognition of the need charitable and public service organizations
2 have for a practicable way of raising funds by means of the internet, declares its intent to grant
3 the privilege of holding online raffles to those organizations which qualify as provided in this article.

§47-21A-102. Definitions.

1 For purposes of this article, unless specified otherwise:

2 "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 "Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt,
18 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 "Commissioner" means the State Tax Commissioner.

25 "Conduct" means to direct the actual holding of a online raffle by activities including, but
26 not limited to, selling tickets, collecting money, drawing or arranging for the drawing of the winning
27 numbers or names, announcing the winning numbers or names, posting the winning numbers or
28 names, verifying winners, and awarding prizes.

29 "Expend net proceeds for charitable or public service purposes" means to devote the net
30 proceeds of an online raffle occasion or occasions to a qualified recipient organization or as
31 otherwise provided by this article and approved by the commissioner pursuant to §47-21A-113 of
32 this code.

33 "Gross proceeds" means all moneys collected or received from the conduct of an online
34 raffle held by a licensee during a license period.

35 "Licensee" means any organization or association granted an annual or limited occasion
36 license pursuant to the provisions of this article.

37 "Net proceeds" means all moneys collected or received from the conduct of an online raffle
38 or online raffles at occasions held by a licensee during a license period after payment of the raffle
39 expenses authorized by §47-21A-111, §47-21A-112, and §47-21A-113 of this code.

40 "Person" means any individual, association, society, incorporated or unincorporated
41 organization, firm, partnership, or other nongovernmental entity or institution.

42 "Patron" means any individual who participates in an online raffle by purchasing an online
43 raffle ticket other than an individual who is participating in the conduct of the occasion.

44 "Platform provider" means any third-party entity that contracts by written agreement with
45 a licensee to host, conduct, or otherwise administer an online raffle by utilizing a software system,
46 web application, method, or other process for the purpose of conducting online raffles over the
47 Internet.

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

54 "Online Raffle" shall have the same meaning as "raffle" as defined in §47-21-2 of this code
55 but conducted utilizing a software system, web application, method, or other process for the
56 purpose of conducting online raffles over the Internet.

57 "Online raffle occasion" or "occasion" means a single online session at which a series of
58 one or more successive online raffles is conducted by a single licensee.

59 "Tax-exempt association or organization" means an association or organization which is,
60 and has received from the Internal Revenue Service a determination letter that is currently in
61 effect stating that the organization is, exempt from federal income taxation under subsection
62 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or

63 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under
64 subsection 527(a) of that code.

§47-21A-103. Authorizing the conduct of certain online raffles without a license.

1 Notwithstanding any other provisions of this article to the contrary, any charitable or public
2 service organization which has been in existence in this state for at least one year is hereby
3 authorized to conduct online raffles without compliance with the licensing provisions of this article:
4 Provided, That any prize awarded in any single online raffle in an online raffle occasion may not
5 exceed in value the sum of \$4,000: Provided, however, That the cumulative gross proceeds
6 derived from the conduct of online raffle occasions by any such charitable or public service
7 organization may not exceed \$15,000 during any calendar year: Provided further, That any such
8 organization may not be subject to the record-keeping provisions of §47-21A-114 of the code but
9 shall maintain a separate accounting for the operation of online raffles. All records required by
10 this section shall be maintained for at least three calendar years and shall be available for
11 reasonable inspection by the commissioner.

§47-21A-104. Who may hold online raffles; application for license; licenses not transferable.

1 (a) Except as provided in §47-21A-103 of this code, only persons, as defined in this article,
2 who are residents of this state and who are active members of any charitable or public service
3 organization which has been in existence in this state for at least two years prior to filing an
4 application for an online raffle license issued pursuant to §47-21A-105 and §47-21A-106 of the
5 code may hold online raffle occasions in accordance with the provisions of this article during the
6 time it holds a valid license.

7 (b) Application for an online raffle license shall be made to the Tax Commissioner and
8 shall be on a form supplied by him or her. The application shall contain the information required
9 by §47-21A-108 of the code and any other information which the commissioner considers
10 necessary. No online raffle may be held and no tickets may be sold pursuant to this article until

11 the online raffle application has been approved by the Tax Commissioner and the license has
12 been received by the applicant: *Provided*, That no online raffle occasion may be held and no
13 online raffle tickets may be sold until a 60-day filing period, which is that time period between the
14 receipt of that application by the Tax Commissioner and the first online raffle occasion, has
15 expired: *Provided, however*, That the Tax Commissioner shall send the applicant its license within
16 five days after the application is approved. If the 60-day filing period has expired and the
17 application has not been denied and the online raffle license has not been received by the
18 applicant, the applicant may consider the application approved and begin to sell tickets for the
19 online raffle or hold the online raffle occasion. The Tax Commissioner shall send the applicant its
20 license within five days after the expiration of the filing period if the application has not been
21 otherwise denied.

22 (c) No online raffle license issued pursuant to this article may be transferred.

§47-21A-105. Annual license; conditions on holding of online raffles.

1 A charitable or public service organization or any of its auxiliaries or other organizations
2 otherwise affiliated with it, may apply for an annual license. Only one license per year in the
3 aggregate may be granted to a charitable or public service organization and all of its auxiliaries
4 or other associations or organizations otherwise affiliated with it: *Provided*, That for purposes of
5 this section, the various branches, chapters or lodges of any national association or organization,
6 or local churches of a nationally organized church, are not considered affiliates or auxiliaries of
7 each other. The commissioner shall by regulation provide for the manner for determining to which
8 organization, whether the parent organization, an affiliate, or an auxiliary, the one license allowed
9 under this section is granted. An annual license is valid for one year from the date of issuance.
10 No organizations may hold a joint online raffle occasion under any annual licenses.

11 A licensee shall utilize geo-location or geo-fencing technology to ensure that online
12 charitable raffles patrons are located in the State of West Virginia. A licensee shall maintain in

13 the State of West Virginia, its servers used to transmit information for the purposes of patron
14 participation.

15 The Tax Commissioner shall provide a hyperlink on its website that will display a list of
16 every active and approved licensee to conduct an online raffle or raffle occasion. A licensee shall
17 conspicuously provide this hyperlink on any online raffle ticket that is purchased by a patron. A
18 licensee shall conspicuously display at its physical location, that was provided on its application,
19 the approved license to conduct an online raffle.

§47-21A-106. Limited occasion license; conditions on holding of online raffles.

1 Two or more organizations may hold a joint online raffle occasion provided each
2 participating organization has been granted a limited occasion online raffle license for such jointly
3 held occasion: *Provided*, That no licensee which holds an annual license may obtain more than
4 one limited occasion license.

5 A limited occasion license is valid only for the time period specified in the application and
6 entitles only the licensee to hold two online raffle occasions during the time period so specified
7 which may not exceed six months from the date of issuance of such limited occasion license.

8 Subject to the limitations set forth in this section for charitable or public service
9 organization having an annual license, a charitable or public service organization and all of its
10 auxiliaries or other associations or organizations otherwise affiliated with it, may be granted only
11 three limited occasion licenses per year in the aggregate. For purposes of this section, the various
12 branches, chapters, or lodges of any national association or organization, or local churches of a
13 nationally organized church, are not considered affiliates or auxiliaries of each other. The
14 commissioner shall by rulemaking provide the manner for determining to which organization,
15 whether the parent organization, an affiliate, or an auxiliary, the three licenses allowed under this
16 section are granted.

17 The Tax Commissioner shall provide a hyperlink on its website that will display a list of
18 every active and approved licensee to conduct an online raffle or raffle occasion. A licensee shall

19 conspicuously provide this hyperlink on any online raffle ticket that is purchased by a patron. A
20 licensee shall conspicuously display at its physical location, that was provided on its application,
21 the approved license to conduct an online raffle.

§47-21A-107. License fee and exemption from taxes.

1 (a) A license fee shall be paid to the Tax Commissioner for annual licenses in the amount
2 of \$500. A license fee shall be paid to the Tax Commissioner for a limited occasion license in the
3 amount of \$50. All revenue from said license fee shall be deposited in the special revenue account
4 established under the authority of §11-9-2a of this code and used to support the investigatory
5 activities provided for in that section. The license fee imposed by this section is in lieu of all other
6 license or franchise taxes or fees of this state and no county or municipality or other political
7 subdivision of this state may impose a license, or franchise tax, or fee on any online raffle or
8 online raffle occasion.

9 (b) The gross proceeds derived from the conduct of an online raffle occasion are exempt
10 from state and local business and occupation taxes, income taxes, excise taxes, and all special
11 taxes. Any charitable or public service organization conducting an online raffle occasion pursuant
12 to the provisions of this article is exempt from payment of consumers sales and service taxes,
13 use taxes, and all other taxes on all purchases for use or consumption in the conduct of an online
14 raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and
15 sales of online raffle tickets.

§47-21A-108. Information required in application.

1 An application for an online raffle license shall include the following information:

2 (a) Name of the applicant and name and headquarter's address of any state or national
3 organization of which the applicant is a local branch or lodge;

4 (b) The address and telephone number of the applicant organization, if any, and if the
5 applicant organization has no telephone, then the address and telephone number of the person
6 applying on behalf of such organization shall be supplied;

7 (c) For a limited occasion license, the names and addresses of two or more bona fide
8 active members of the applicant organization who are charged with overall responsibility for the
9 applicant's online raffle operations, at least one of whom shall be virtually present and available
10 when the winning numbers or names are drawn, announced, posted, and verified and present
11 when the prizes are awarded; and the names and addresses of the highest elected officer of the
12 licensee and his or her officially appointed designee, one of whom shall be virtually present and
13 available when the winning numbers or names are drawn, announced, posted, and verified and
14 present when the prizes are awarded; for an annual license, the names, addresses and telephone
15 numbers of three or more bona fide active members of the applicant organization who are charged
16 with overall responsibility for the applicant's online raffle operations, at least one of whom shall
17 be virtually present and available when the winning numbers or names are drawn, announced,
18 posted, and verified and present when the prizes are awarded; and the names and addresses
19 and telephone numbers of the highest elected officer of the licensee and his or her officially
20 appointed designee, one of whom shall be virtually present and available when the winning
21 numbers and names are drawn, announced, posted, and verified and present when the prizes
22 are awarded;

23 (d) The address and the location of any platform provider that manages a website software
24 system, web application, method, or process for the purpose of collecting moneys related to the
25 sale of online raffles, securing and safekeeping all moneys collected related to the sale of online
26 raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee
27 before or after the online raffle or online raffle occasion, and conducting licensed online raffles
28 over the Internet. A copy of all written agreements between the licensee and the platform provider
29 providing these services shall specifically provide a statement of all costs and fees to be incurred
30 by the licensee for receiving these services by the platform provider. A copy of any written
31 agreements shall be provided to the Tax Commissioner;

32 (e) Information as may be required by the commissioner to satisfy him or her that the
33 applicant meets the requirements of:

34 (1) Being a charitable or public service organization as defined by this article; and

35 (2) Being in existence in this state for at least one year prior to filing an application for an
36 online raffle license.

37 (f) Designate the date or dates and the time or times when the online raffle occasions will
38 be held;

39 (g) State whether the applicant has ever had a previous application for any online raffle or
40 raffle license refused, or whether any previous online raffle license or raffle license has been
41 revoked or suspended;

42 (h) State the charitable or public service purpose or purposes for which the online raffle
43 proceeds will be expended;

44 (i) Provide statements to the effect that the individuals specified in subdivision (c) of this
45 section and the officers of the applicant understand:

46 (1) That it is a violation of this article to allow any persons other than those authorized by
47 this article to conduct the online raffle;

48 (2) That it is required to file the reports and keep the records as provided by this article;
49 and

50 (3) That it is a crime to violate the provisions of this article and that a violation of the
51 provisions may result in suspension or revocation of the online raffle license or other raffle license
52 and denial of applications for subsequent online raffle licenses or raffle licenses;

53 (j) Provide a sworn statement by an authorized representative of the applicant that the
54 information contained in the application is true to the best of his or her knowledge;

55 (k) Provide a list and description of estimated expenses to be incurred in connection with
56 the holding of the online raffle occasions and the name and address of each payee;

57 (l) A list of the names and addresses of all officers and members of the board of directors,
58 governors or trustees, if any, of the applicant organizations; and

59 (m) Any other necessary and reasonable information which the commissioner may
60 require.

§47-21A-109. Amendment of license.

1 If circumstances beyond the control of the licensee organization prohibit it from holding
2 any online raffle occasion in accordance with the information provided by it in its license
3 application form, the licensee organization may request approval by the commissioner to modify
4 the terms and conditions of its license.

§47-21A-110. Licensee rules and regulations.

1 Each licensee may adopt rules and regulations, not inconsistent with, or in violation of, the
2 provisions of this article, or rules or regulations promulgated hereunder, to govern the conduct of
3 online raffle occasions.

4 Any rules and regulations adopted by the licensee shall be made available for inspection
5 at all raffle occasions held by way of advertising these rules and regulations on their website and
6 by being posted conspicuously at their place of operation that was provided on their application
7 for a license. Any such rules and regulations adopted are a part of the records required to be kept
8 by §47-21A-114 of the code.

§47-21A-111. Limits on prizes awarded; general provisions.

1 Prizes may be money, real or personal property, or merchandise other than beer, wine,
2 spirits, or alcoholic liquor as defined in §60-1-5 of this code. If the prizes are real or personal
3 property or merchandise, the value assigned to them is their fair market value at the time of
4 acquisition for the online raffle or at the time of purchase.

§47-21A-112. Compensation.

1 (a) A licensee may pay a salary, the minimum of which is the federal minimum wage and
2 the maximum of which is not more than 120 percent of the state minimum wage to operators of
3 charitable online raffle games who are either:

4 (1) Active members of the licensee organization and who have been active members in
5 good standing for at least two years prior to the date of filing of the application for an online
6 charitable raffle license or the most recent filing of an application for renewal of the license; or

7 (2) Employees of the licensee organization or its authorized auxiliary organization who
8 are:

9 (A) Residents of this state;

10 (B) Residents of a state bordering this state if the county of his or her residence is
11 contiguous to the county in this state in which the online raffle operation is conducted; or

12 (C) Residents of a bordering state who reside within 35 miles of the county in which the
13 online raffle operation is conducted.

14 (b) If the licensee's gross receipts from online raffle occasions equal or exceed \$100,000
15 for the licensee's most recently filed annual financial report, a salary may be paid to not more than
16 eight operators.

17 (c) If the licensee's gross receipts from online charitable raffle occasions are less than
18 \$100,000, but equal or exceed \$50,000 for the licensee's most recently filed annual financial
19 report, a salary may be paid to not more than five operators.

20 (d) If the licensee's gross receipts from online charitable raffle occasions are less than
21 \$50,000 for the licensee's most recently filed annual financial report, a salary may be paid to no
22 more than three operators.

§47-21A-113. 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 any premises: *Provided*, That a copy of the rental agreement
6 was filed with the online raffle license application with any modifications to the rental agreement
7 to be filed within 10 days of being made: *Provided, however*, That in no event may the rent paid
8 for the use of any premises exceed the fair market value of rent for the premises;

9 (2) The cost to the licensee organization for equipment and supplies used to conduct the
10 online raffle occasion;

11 (3) The cost to the licensee organization for advertising the online raffle occasion;

12 (4) The costs involved in the licensee utilizing technology, Internet service providers,
13 servers, or other necessary infrastructure by which to advertise and conduct the online raffle or
14 online raffle occasion;

15 (5) The costs relating to any platform provider that manages a website software system,
16 web application, method, or process for the purpose of collecting moneys related to the sale of
17 online raffles, securing and safekeeping all moneys collected related to the sale of online raffle
18 tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or
19 after the online raffle or online raffle occasion, and conducting licensed online raffles over the
20 Internet.

21 (b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in
22 §47-21A-111 of the code, may be paid out of the gross proceeds of the conduct of an online raffle.

23 (c) The licensee shall expend all net online raffle proceeds and any interest earned on the
24 net online raffle proceeds for the charitable or public service purposes stated in the application
25 within one year after the expiration of the license under which the online raffle occasions were
26 conducted. A licensee which does not qualify as a qualified recipient organization may apply to
27 the commissioner at the time it applies for an online raffle license for permission to apply any or
28 all of its net proceeds to directly support a charitable or public service activity or endeavor which
29 it sponsors.

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

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

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

§47-21A-114. Records; commissioner audit.

1 Any licensee which holds an online raffle occasion as provided by this article shall maintain
2 a separate account and separate bookkeeping procedure for its online raffle operations. All

3 records required by this article shall be maintained for at least three years and shall be open to
4 the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause
5 to believe a licensee has violated any of the provisions of this article, he or she may perform, or
6 cause to be performed, an audit of the licensee's books and records.

§47-21A-115. Advertising.

1 A licensee may advertise its online raffle occasions in a manner reasonably necessary to
2 promote the occasion.

§47-21A-116. Annual Platform Provider license; conditions on holding of online raffles.

1 A platform provider may apply for an annual Platform Provider license: *Provided*, That a
2 platform provider that has a principal place of business located within this state shall be registered
3 with the West Virginia Secretary of State and also possess a Business Registration Certificate
4 from the West Virginia State Tax Department: *Provided, however*, That a platform provider that
5 has a principal place of business located outside of this state shall be registered as an appropriate
6 foreign corporation with the West Virginia Secretary of State and also possess a Business
7 Registration Certificate from the West Virginia State Tax Department.

§47-21A-117. Annual Platform Provider License fee and exemption from taxes.

1 A license fee shall be paid to the Tax Commissioner for annual Platform Provider licenses
2 in the amount of \$500. All revenue from said license fee shall be deposited in the special revenue
3 account established under the authority of §11-9-2a of this code and used to support the
4 investigatory activities provided for in said section.

§47-21A-118. Information required in application for an Annual Platform Provider License.

1 An application for an Annual Platform Provider license shall include the following
2 information:

3 (a) Name of the applicant, legal name of the entity, jurisdiction, and locale of incorporation,
4 telephone number, e-mail address, and the physical and mailing address of their principal place
5 of business;

6 (b) A description of methods by which they manage, administer, or oversee a website
7 software system, web application, method, or other process for the purposes of collecting moneys
8 related to the sale of online raffles, securing and safekeeping all moneys collected related to the
9 sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to
10 the licensee before or after the online raffle or online raffle occasion, and conducting licensed
11 online raffles over the Internet;

12 (c) Provide statements that detail the costs and fee structures for any services that are
13 provided by the platform provider.

14 (d) State whether the applicant has ever had a previous application for any license relating
15 to the regulation of an online raffle refused, or whether any previous license relating to the
16 regulation of an online raffle has been revoked or suspended;

17 (e) Provide statements to the effect that the individuals and entities specified in subdivision
18 (a) of this section understand:

19 (1) That it is a violation of this article to allow any persons other than those authorized by
20 this article to conduct business related to being a platform provider;

21 (2) That it is required to file the reports and keep the records as provided by this article;
22 and

23 (3) That it is a crime to violate the provisions of this article and, that a violation of such
24 provisions may result in suspension or revocation of the platform provider license and denial of
25 applications for subsequent platform provider licenses;

26 (f) Provide a sworn statement by an authorized representative of the applicant that the
27 information contained in the application is true to the best of his or her knowledge;

28 (g) A list of the names and addresses of all officers and members of the board of directors,
29 if any, of the platform provider; and

30 (h) Any other necessary and reasonable information which the commissioner may require.

§47-21A-119. Records; commissioner audit.

1 Any licensee which holds an Annual Platform Provider License as provided by this article
2 shall maintain a bookkeeping procedure for all of its activities relating to being a platform provider
3 for any charitable or public service organization conducting online raffles in the state. All records
4 required by this article shall be maintained for at least three years and shall be open to the
5 commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to
6 believe a licensee has violated any of the provisions of this article, he or she may perform, or
7 cause to be performed, an audit of the licensee's books and records.

§47-21A-120. Fraud; penalties.

1 In addition to any other offense set forth in this code, any person, platform provider, or
2 licensee that knowingly conducts or participates in a fraudulently or deceptively conducted, or
3 administered online raffle with intent to defraud, is guilty of a felony, and, upon conviction thereof,
4 shall be fined not less than \$500 nor more than \$10,000, or imprisoned in the penitentiary not less
5 than one, nor more than five years, or both fined and imprisoned.

§47-21A-121. Obtaining license fraudulently; penalty.

1 In addition to any other offense set forth in this code, any person, platform provider, or
2 licensee that knowingly obtains or assists another in obtaining an online raffle license or platform
3 provider license under false, deceptive, or fraudulent pretenses is guilty of a misdemeanor, and,
4 upon conviction thereof, shall be fined not less than \$500 nor more than \$10,000.

§47-21A-122. Violation of provisions; crime; civil penalties.

1 (a) Any person, entity, or platform provider that knowingly violates any provisions of this
2 article, other than the provisions of §47-21A-120 or §47-21A-121 of this code is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than
4 \$1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than \$100
5 nor more than \$100,000 or confined in jail not more than one year, or both fined and confined.

6 (b) In addition to any other penalty provided by law, any person, licensed or unlicensed
7 under this article, who violates any provisions of this article, or who fails to perform any of the
8 duties or obligations created and imposed upon them by the provisions of this article, other than
9 the provisions of §47-21A-120 or §47-21A-121 of this code is subject to a civil penalty as may be
10 determined by the Tax Commissioner in an amount not to exceed \$10,000.

§47-21A-123. Administration; rules and regulations.

1 (a) The commissioner shall promulgate rules and regulations to administer the provisions
2 of this article in accordance with the provisions of Chapter 29A of this code. The commissioner
3 has emergency rulemaking authority to promulgate rules and regulations to administer the
4 provisions of this article in accordance with the provisions of Chapter 29A of this code.

5 (b) The commissioner shall deny an application for any license or modification thereof if
6 he or she finds that the issuance thereof would be in violation of the provisions of this article.

7 (c) The commissioner may revoke, suspend, or refuse to renew any license if the licensee
8 or any member of a licensee organization has been convicted pursuant to §47-21A-120, §47-21A-
9 121, or §47-21A-122 of the code and the commissioner finds that it would be in the public interest
10 to do so; or if the licensee has violated any of the provisions of this article: *Provided*, That before
11 revoking or suspending any license issued under the authority of this article, the commissioner
12 shall give at least 10 days, three days for a limited occasion license, notice to the licensee. Notice
13 shall be in writing, state the reason for revocation or suspension, and inform the licensee of its
14 right to petition the Office of Tax Appeals for a hearing at which the licensee may show cause
15 why the license should not be revoked or suspended. The notice required by this section shall be
16 by personal or substituted service, in accordance with the West Virginia rules of civil procedure
17 for trial courts of record, on the person who applied for the license on behalf of the licensee. The
18 licensee may, at the time designated for the hearing, present evidence in its behalf and be
19 represented by counsel. A decision of the Office of Tax Appeals upholding in whole, or in part,

20 the revoking or suspending a license is subject to judicial review as provided in §11-10A-19 of
21 this code.

22 (d) The commissioner may suspend, revoke, or refuse to renew any license issued
23 hereunder for a material failure to maintain the records or file the reports required by this article if
24 the commissioner finds that said failure will substantially impair the commissioner's ability to
25 administer the provisions of this article with regard to such licensee.

26 (e) The provisions of §29A-5-1 et seq. of this code apply to the denial, revocation,
27 suspension of, or refusal to renew, any license hereunder.

28 (g) The burden of proof in any administrative or court proceeding is on the applicant to
29 show cause why any license should be issued or renewed and on the licensee to show cause
30 why any license should not be revoked or suspended.

31 (h) Notwithstanding any other provision of this article, the commissioner may issue an
32 emergency order suspending any license under the following circumstances and in the following
33 manner:

34 (1) An emergency order may be issued only when the commissioner believes that:

35 (i) There has been a criminal violation of this article;

36 (ii) Such action is necessary to prevent a criminal violation of this article; or

37 (iii) Such action is necessary for the immediate preservation of the public peace, health,
38 safety, morals, good order, or general welfare.

39 (2) The emergency order shall set forth the grounds upon which it is issued, including a
40 statement of facts constituting the alleged emergency necessitating such action. This order shall
41 be served by personal or substituted service on the licensee or the person who applied for the
42 license on behalf of the licensee.

43 (3) The emergency order is effective immediately upon issuance and service upon the
44 licensee.

45 (4) Within five days after issuance of an emergency order, the licensee may petition the
46 Office of Tax Appeals to set a time and place for a hearing wherein the licensee may appear and
47 show cause why its license should not be revoked.

§47-21A-124. Filing of reports.

1 (a) Each licensee holding an annual, limited occasion, platform provider, or state fair
2 license shall file with the commissioner a financial report summarizing its online raffle operations
3 within 30 days after the expiration date of the license. The time period covered by an annual report
4 is the full license year or, at the election of a licensee receiving state or federal funding, the most
5 recently ended state or federal fiscal year.

6 (b) The reports required by this section relating to a platform provider license shall
7 additionally contain the name, address, and telephone number of each charitable organization to
8 which the platform provider provided services. The report shall also list the specific online raffle
9 occasions that the platform provider participated in, including the date of each online raffle
10 occasion, any costs and fees associated with these online raffle occasions, and any other
11 information required by the commissioner.

12 (c) The reports required by this section relating to an annual license or a state fair license
13 shall additionally contain the name, address, and social security number of any individual who
14 received, during the course of an online raffle occasion, prizes the aggregate value of which
15 exceeded \$100, and other information required by the commissioner: *Provided*, That any licensee
16 failing to file the report when due is liable for a penalty of \$25 for each month or fraction of a month
17 during which the failure continues, the penalty not to exceed \$100: *Provided, however*, That
18 annual financial reports shall contain either a compilation or review of such financial report by a
19 certified or licensed public accountant, or may be audited by a certified or licensed public
20 accountant, if a licensee's gross receipts exceed \$50,000.

§47-21A-125. Filing of copy of license; application open to public inspection.

1 Whenever any license is granted pursuant to this article, the commissioner shall cause a
2 copy of the license to be filed and recorded with the clerk of the county commission of the county
3 in which the licensee's physical operations exist as provided in its application: *Provided*, That a
4 platform provider license issued to an entity that has a principal place of business outside of the
5 state shall provide a hyperlink on their website which will be directed towards a viewable version
6 of the platform provider license. A copy of any application shall be made available for public
7 inspection in the office of the commissioner.

§47-21A-126. Prohibited acts by convicted persons.

1 Any person convicted of any felony, or a misdemeanor for a gambling offense, or of a
2 violation of any provision of §47-20-1 *et seq.* of this code, is prohibited from directly or indirectly
3 obtaining an online raffle license, conducting an online raffle game, or leasing or providing to a
4 licensee any premises where online raffle occasions may be overseen or held, within 10 years
5 from said conviction.

§47-21A-127. Proceeds of state fair.

1 The Legislature declares that the net proceeds of any online raffle game which accrue to
2 the West Virginia State Fair are considered used for charitable or public service purposes as
3 defined in §47-21A-2 of this code. Any proceeds allowed by the state fair board to be paid to or
4 retained by persons who conduct or oversee online raffle occasions are deemed to be expenses
5 incurred by the state fair board.

§47-21A-128. State fair online raffle license; rules and regulations.

1 The West Virginia State Fair board may apply annually to the Tax Commissioner for a
2 state fair online raffle license to provide for the conduct of raffle occasions. The license shall
3 permit the state fair board to have one or more persons conduct online raffle occasions who have
4 conducted online raffle occasions on a regular basis for a least one year prior to the date of the
5 state fair board's application. A license fee of \$500 shall be paid to the Tax Commissioner for the

6 state fair online raffle license. The provisions of §47-21A-111, §47-21A-112, and §47-21A-113 of
7 the code do not apply to a state fair raffle license. No state fair online raffle license may be issued
8 unless the application includes a copy of any agreement entered into between the state fair board
9 and the persons or entities who are to conduct raffle occasions. The state fair board may adopt
10 reasonable rules and regulations, not inconsistent with or in violation of the provisions of this
11 article, to govern the holding of online raffle occasions.

§47-21A-129. Severability.

1 If, for any reason, any section, sentence, clause, phrase, or provision of this article or the
2 application thereof to any person or circumstance is held unconstitutional or invalid, such
3 unconstitutionality or invalidity may not affect other sections, sentences, clauses, phrases, or
4 provisions or their application to any other person or circumstance, and to this end each and every
5 section, sentence, clause, phrase, or provision of this article is hereby declared to be severable.

§47-21A-130. Additional remedies for the commissioner; administrative procedures;
deposit of money penalties.

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

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

6 (2) Suspend the license of any licensee for the period of time the commissioner deems
7 appropriate, not to be less than one week nor more than 12 months, for any material violation of
8 the provisions of this article or legislative rule of the commissioner promulgated for this article;

9 (3) Place any licensee on probation for not less than six months nor more than five years:
10 Provided, That if a licensee is placed on probation, as a condition of the probation, the licensee
11 shall pay to the commissioner a probation supervision fee in an amount equal to two percent of
12 the gross proceeds derived by the licensee from the conduct of online raffle occasions, or a

13 probation supervision fee in an amount equal to two percent of the gross proceeds derived by the
14 licensee from the conduct of providing a platform within the state during the period of the
15 suspension, but, in no event, may the probation supervision fee be less than \$2,000. All probation
16 supervision fee revenue shall be placed in a special account and used by the commissioner, after
17 appropriation by the Legislature, to offset the expenses and costs incurred by the Tax Division to
18 supervise the licensee;

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

22 (5) Require any licensee to prohibit one or more members, supporters, volunteers, or
23 employees of the licensee involved in acts of material violation of the provisions of this article or
24 legislative rules of the commissioner promulgated for this article, from all future online raffle
25 occasions held under the license, or for the period of time specified by the commissioner;

26 (6) Impose a civil money penalty in an amount not less than \$100 nor more than two times
27 the annual gross proceeds derived by any licensee, for each material violation of the provisions
28 of this article or legislative rules of the commissioner: *Provided*, That in setting any monetary
29 penalty for a first offense, the commissioner shall take into consideration the ability of the licensee
30 to continue to exist and operate. For each material violation which is a second or subsequent
31 offense, the amount of the civil penalty that may be imposed may not be less than \$500 and may
32 not exceed two times the annual gross proceeds of the licensee. Application of this subdivision
33 and the amount of civil money penalty levied shall be determined in accordance with a legislative
34 rule promulgated by the commissioner pursuant to §29A-3-1 *et seq.* of this code. The
35 commissioner may file this rule as an emergency rule. Any licensee aggrieved by the amount of
36 the civil penalty may surrender its license, or, after exhausting all administrative remedies, have
37 the matter reviewed in the West Virginia Intermediate Court of Appeals; or

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

47 (b) *Administrative procedures.*

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

51 (2) A licensee may appeal an order of the commissioner issued under this section by
52 petitioning the Office of Tax Appeals within 20 days after the licensee is served with a copy of the
53 order.

54 (3) When a petition is filed timely, the provisions of §11-10A-1 *et seq.* of this code shall
55 apply.

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

59 (c) *Deposit of money penalties.* — All fines, money penalties and fees imposed pursuant
60 to this section, except the probation supervision fee imposed by subdivision (3), subsection (a) of
61 this section, shall be deposited into the General Revenue Fund of this state.