

H. B. 2516

(By Delegates Swartzmiller, Boggs, Hall, Manypenny,
 D. Poling, Shaver and Williams)
 [Introduced January 17, 2011; referred to the
 Committee on the Judiciary then Finance.]

A BILL to amend and reenact §47-21-2 and §47-21-20 of the Code of
 West Virginia, 1931, as amended; and to amend said code by
 adding thereto a new section, designated §47-21-19a, all
 relating to charitable raffles; and allowing certain fraternal
 societies and veteran's organizations to use electronic or
 mechanical raffle devices to conduct raffles.

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; and to amend said code
 by adding thereto a new section, designated §47-21-19a, all to read
 as follows:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

1 (a) "Charitable or public service activity or endeavor" means
2 any bona fide activity or endeavor which directly benefits a number
3 of people by:

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

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

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

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

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

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

19 (7) Providing or supporting nonprofit cultural or artistic
20 activities; or

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

23 (b) "Charitable or public service organization" means a bona
24 fide, not for profit, tax-exempt, benevolent, educational,

1 philanthropic, humane, patriotic, civic, religious, fraternal or
2 eleemosynary incorporated or unincorporated association or
3 organization; or a volunteer fire department, rescue unit or other
4 similar volunteer community service organization or association;
5 but does not include any nonprofit association or organization,
6 whether incorporated or not, which is organized primarily for the
7 purposes of influencing legislation or supporting or promoting the
8 campaign of any single candidate for public office.

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

10 (d) "Concession" means any stand, booth, cart, counter or
11 other facility, whether stationary or movable, where beverages,
12 both alcoholic and nonalcoholic, food, snacks, cigarettes or other
13 tobacco products, newspapers, souvenirs or any other items are sold
14 to patrons by an individual operating the facility.

15 Notwithstanding anything contained in subdivision (2), subsection
16 (a), section twelve, article seven, chapter sixty of this code to
17 the contrary, "concession" includes beverages which are regulated
18 by and shall be subject to the provisions of chapter sixty of this
19 code.

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

1 (f) "Electronic or mechanical raffle device" means any
2 electronic or mechanical raffle ticket dispenser, raffle ticket
3 reader or other electronic or mechanical device of whatever design
4 or function, designed or used to enhance or aid the conduct of a
5 raffle. This subsection may not be interpreted to include or
6 prevent the use of:

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

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

13 (3) Accounting and record keeping software for the purpose of
14 maintaining accounting and reporting records of the licensee, and
15 the computer for running those applications, not used in the play
16 of any game.

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

22 (h) "Fraternal Society or veteran's organization" means a
23 fraternal society or veteran's organization that is: (1) A
24 fraternal beneficiary society that is exempt from federal income

1 tax under section 501(c)(8) of the Internal Revenue Code of 1986,
2 as amended; (2) a domestic fraternal society that is exempt from
3 federal income tax under section 501(c)(10); or (3) a veterans'
4 organization that is exempt from federal income tax under section
5 501(c)(19) of the Internal Revenue Code.

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

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

14 ~~(i)~~ (k) "Licensee" means any organization or association
15 granted an annual or limited occasion license pursuant to the
16 provisions of this article.

17 ~~(j)~~ (l) "Net proceeds" means all moneys collected or received
18 from the conduct of raffle or raffles at occasions held by a
19 licensee during a license period after payment of the raffle
20 expenses authorized by sections eleven, thirteen and fifteen of
21 this article; this term ~~shall~~ may not be ~~deemed~~ considered to
22 include moneys collected or received from the sale of concessions
23 at raffle occasions.

24 ~~(k)~~ (m) "Person" means any individual, association, society,

1 incorporated or unincorporated organization, firm, partnership or
 2 other nongovernmental entity or institution.

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

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

17 ~~(n)~~(p) "Raffle" means a game involving the selling or
 18 distribution of paper tickets, ~~not enhanced or aided by the use of~~
 19 ~~any electronic or mechanical raffle ticket dispenser, raffle ticket~~
 20 ~~reader or other electronic or mechanical device of whatever design~~
 21 ~~or function~~, entitling the holder or holders to participate in a
 22 raffle game for a chance on a prize or prizes. ~~This subsection~~
 23 ~~shall not be interpreted to prevent the use of:~~

24 ~~— (1) Hand cranked or motorized drum mixers which randomly mix~~

1 ~~tickets or other indicia together for the purpose of allowing the~~
 2 ~~hand drawing of a ticket or winning indicia.~~

3 ~~—— (2) A cash register for handling proceeds of sales and other~~
 4 ~~ordinary cash handling and record keeping functions of a raffle~~
 5 ~~licensee.~~

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

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

13 ~~(p)~~(r) "Tax-exempt association or organization" means an
 14 association or organization which is, and has received from the
 15 "Internal Revenue Service" a determination letter that is currently
 16 in effect stating that the organization is exempt from federal
 17 income taxation under subsection 501(a) and described in subsection
 18 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d)
 19 of the Internal Revenue Code of 1986, as amended; or is exempt from
 20 income taxes under subsection 527(a) of said code.

21 **§47-21-19a. Use of electronic or mechanical raffle devices**
 22 **prohibited; exceptions.**

23 (a) Except as specifically authorized in subsection (b) of
 24 this section, a person licensed under this article, and a person

1 who operates a raffle without a license under section three of this
2 article may not conduct a raffle by the use or means of an
3 electronic or mechanical raffle device.

4 (b) A licensed fraternal society or veteran's organization may
5 operate or conduct a raffle by the use or operation of an
6 electronic or mechanical raffle device: Provided, That not more
7 than five electronic or mechanical raffle devices may be used or
8 located upon the premises for which the license was issued.

9 **§47-21-20. Violation of provisions; crime; civil penalties;**
10 **additional grounds for suspension or revocation.**

11 (a) Any person who knowingly violates any provisions of this
12 article, other than the provisions of sections eighteen or
13 nineteen, or subsection (b) of this section, is guilty of a
14 misdemeanor and, upon conviction thereof, shall be fined not less
15 than \$100 nor more than \$1,000; and, upon a second or subsequent
16 conviction thereof, shall be fined not less than \$100 nor more than
17 \$100,000 or confined in jail not more than one year or both fined
18 and confined.

19 (b) ~~On and after July 1, 2010, any~~ Any person licensed under
20 this article, or any person who operates a raffle without a license
21 under section three of this article, who is in possession of any
22 electronic or mechanical raffle ~~ticket dispenser, raffle ticket~~
23 ~~reader or other electronic or mechanical device of whatever design~~

1 ~~or function, other than those machines and apparatus allowed under~~
2 ~~subsection (n) of section two of this article, device, other than~~
3 ~~those electronic or mechanical raffle devices allowed under~~
4 ~~subsection (b) of section nineteen-a of this article that is used~~
5 or designed to be used as part of a licensed raffle is guilty of a
6 felony and, upon conviction thereof, shall be imprisoned in a state
7 correctional facility for a term of not less than one year nor more
8 than three years, and fined not less than \$50,000 nor more than
9 \$100,000, for each electronic or mechanical raffle ~~ticket~~
10 ~~dispenser, raffle ticket reader or other electronic or mechanical~~
11 ~~device of whatever design or function, other than those machines~~
12 ~~and apparatus allowed under subsection (n) of section two of this~~
13 ~~article, device, other than those electronic or mechanical raffle~~
14 ~~devices allowed under subsection (b) of section nineteen-a of this~~
15 ~~article in the person's actual or constructive possession in this~~
16 state. For a person other than an individual, upon conviction, the
17 fine may not be less than \$100,000 nor more than \$500,000 for each
18 video electronic or mechanical raffle ticket dispenser, raffle
19 ticket reader or other electronic or mechanical device of whatever
20 design or function in the person's actual or constructive
21 possession in this state.

22 (c) A licensee may also have his or her license suspended or
23 revoked for failure to comply with this article and may be required
24 to forfeit the ~~machines or devices~~ electronic or mechanical raffle

1 device to the Tax Commissioner for destruction.

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

NOTE: The purpose of this bill is to allow certain fraternal societies and veteran's organizations to use electronic or mechanical raffle devices to conduct raffles.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§47-21-19a is new; therefore, it has been completely underscored.