

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2961

BY DELEGATES NELSON AND BOGGS

(BY REQUEST OF THE TAX AND REVENUE DEPARTMENT)

[Originating in the Committee on Finance;

March 23, 2017]

1 A BILL to amend and reenact §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §47-21-21 and §47-21-30 of said code, all relating
3 to appeals of certain administrative actions taken by the Tax Commissioner affecting
4 certain charitable bingo or charitable raffle licensees.

Be it enacted by the Legislature of West Virginia:

1 That §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted; and that §47-21-21 and §47-21-30 of said code be amended and
3 reenacted, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-23. Administration; Rules and Regulations.

1 (a) The Tax Commissioner shall administer the provisions of this article in accordance with
2 the provisions of this article and chapter twenty- nine-a of this code.

3 (b) The commissioner shall deny an application for a license if he finds that the issuance
4 thereof would be in violation of the provisions of this article.

5 (c) The commissioner may revoke, suspend or refuse to renew a license if the licensee or
6 any member of a licensee organization has been convicted pursuant to section eighteen or
7 nineteen of this article and the commissioner finds that it would be in the public interest to do so;
8 or if the licensee has violated any of the provisions of this article: *Provided*, That before revoking
9 or suspending a license issued under the authority of this article, the commissioner shall give at
10 least ten days, three days for a limited occasion or state fair license, notice to the licensee. Notice
11 shall be in writing, shall state the reason for revocation or suspension and shall ~~designate a time~~
12 ~~and place when~~ inform the licensee of its right to petition the Office of Tax Appeals for a hearing
13 at which the licensee may show cause why the license should not be revoked or suspended.
14 Notice shall be sent by certified mail to the address of the licensee or served by certified mail or
15 by personal or substituted service on the person who applied for the license on behalf of the
16 licensee. The licensee may, at the time designated for the hearing, produce evidence in its behalf

17 and be represented by counsel. A decision of the ~~commissioner~~ Office of Tax Appeals upholding,
18 in whole or in part, the revoking or suspending of a license is subject to judicial review as provided
19 in section nineteen, article ten-a, chapter eleven of this code. ~~upon the appeal of a licensee.~~

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

24 (e) The commissioner shall promulgate reasonable rules and regulations necessary to the
25 administration of this article.

26 (f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial,
27 revocation, suspension of or refusal to renew a license hereunder.

28 (g) The burden of proof in any administrative or court proceeding is on the applicant to
29 show cause why a bingo license should be issued or renewed and on the licensee to show cause
30 why its 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 a bingo license in the following manner:

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

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

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

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

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

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

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

**§47-20-31. Additional remedies for the commissioner; administrative procedures; deposit
of money penalties.**

1 (a) *Additional remedies.* — Notwithstanding any provision of this article to the contrary,
2 the 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 twelve months, for any material violation
8 of the provisions of this article or legislative rule of the commissioner promulgated for this article;

9 (3) Place a licensee on probation for not less than six months nor more than five years:
10 *Provided,* That in the event a licensee is placed on probation, as a condition of the probation, the
11 licensee shall pay to the commissioner a probation supervision fee in an amount equal to two
12 percent of the gross proceeds derived by the licensee from the conduct of bingo occasions during
13 the period of the suspension, but, in no event, may the probation supervision fee be less than
14 \$2,000. All probation supervision fee revenue shall be placed in a special account and used by
15 the commissioner, after appropriation by the Legislature, to offset the expenses and costs
16 incurred by the Tax Division to supervise the licensee;

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

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

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

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

46 (b) *Administrative procedures.*

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

50 (2) A licensee may appeal an order of the commissioner issued under this section by ~~filing~~
51 ~~a written protest with the commissioner, either in person or by certified mail,~~ petitioning the Office
52 of Tax Appeals within twenty days after the licensee is served with a copy of the order.

53 (3) When a ~~written protest~~ petition is filed timely, the provisions of article ~~five, chapter~~
54 ~~twenty-nine-a~~ ten-a, chapter eleven of this code shall apply. ~~The commissioner may by procedural~~
55 ~~rule specify the form and content of a written protest.~~

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.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-21. 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 twenty-nine-a of this code.

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

5 (c) The commissioner may revoke, suspend or refuse to renew a license if the licensee or
6 any member of a licensee organization has been convicted pursuant to section eighteen or
7 nineteen of this article and the commissioner finds that it would be in the public interest to do so;
8 or if the licensee has violated any of the provisions of this article: *Provided*, That before revoking

9 or suspending a license issued under the authority of this article, the commissioner shall give at
10 least ten days, three days for a limited occasion license, notice to the licensee. Notice shall be in
11 writing, state the reason for revocation or suspension and ~~designate a time and place when~~ inform
12 the licensee of its right to petition the Office of Tax Appeals for a hearing at which the licensee
13 may show cause why the license should not be revoked or suspended. The notice required by
14 this section shall be by personal or substituted service, in accordance with the West Virginia rules
15 of civil procedure for trial courts of record, on the person who applied for the license on behalf of
16 the licensee. The licensee may, at the time designated for the hearing, present evidence in its
17 behalf and be represented by counsel. A decision of the ~~commissioner~~ Office of Tax Appeals
18 upholding in whole or in part the revoking or suspending a license is subject to judicial review as
19 provided in section nineteen, article ten-a, chapter eleven of this code. ~~upon the appeal of a~~
20 ~~licensee. Such decision shall be subject to judicial review in the same manner as other decisions~~
21 ~~of the commissioner~~

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 ~~such~~ 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 commissioner shall promulgate reasonable rules and regulations necessary to the
27 administration of this article.

28 (f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial,
29 revocation, suspension of or refusal to renew a license hereunder.

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

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

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

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

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

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

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

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

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

**§47-21-30. Additional remedies for the commissioner; administrative procedures; deposit
of money penalties.**

1 (a) *Additional remedies.* — Notwithstanding any provision of this article to the contrary,
2 the 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 twelve months, for any material violation
8 of the provisions of this article or legislative rule of the commissioner promulgated for this article;

9 (3) Place a licensee on probation for not less than six months nor more than five years:
10 *Provided*, That in the event a licensee is placed on probation, as a condition of the probation, the
11 licensee shall pay to the commissioner a probation supervision fee in an amount equal to two
12 percent of the gross proceeds derived by the licensee from the conduct of raffle occasions during
13 the period of the suspension, but, in no event, may the probation supervision fee be less than
14 \$2,000. All probation supervision fee revenue shall be placed in a special account and used by
15 the commissioner, after appropriation by the Legislature, to offset the expenses and costs
16 incurred by the Tax Division to supervise the licensee;

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

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

24 (6) Impose a civil money penalty in an amount not less than \$100 nor more than two times
25 the annual gross proceeds derived by the licensee, for each material violation of the provisions of
26 this article or legislative rules of the commissioner: *Provided*, That in setting any monetary penalty
27 for a first offense, the commissioner shall take into consideration the ability of the licensee to
28 continue to exist and operate. For each material violation which is a second or subsequent
29 offense, the amount of the civil penalty that may be imposed may not be less than \$500 and may
30 not exceed two times the annual gross proceeds of the licensee. Application of this subdivision
31 and the amount of civil money penalty levied shall be determined in accordance with a legislative

32 rule promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this
33 code. The commissioner may file this rule as an emergency rule. Any licensee aggrieved by the
34 amount of the civil penalty may surrender its license, or, after exhausting all administrative
35 remedies, have the matter reviewed in the circuit court of the county where the offense giving rise
36 to the civil penalty occurred; or

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

46 (b) *Administrative procedures.*

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

50 (2) A licensee may appeal an order of the commissioner issued under this section by ~~filing~~
51 ~~a written protest with the commissioner, either in person or by certified mail,~~ petitioning the Office
52 of Tax Appeals within twenty days after the licensee is served with a copy of the order.

53 (3) When a ~~written protest~~ petition is filed timely, the provisions of article ~~five, chapter~~
54 ~~twenty-nine-a ten-a, chapter eleven~~ of this code shall apply. ~~The commissioner may by procedural~~
55 ~~rule specify the form and content of a written protest.~~

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.