

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2961

BY DELEGATES NELSON AND BOGGS

BY REQUEST OF THE TAX AND REVENUE DEPARTMENT

[Introduced March 13, 2017; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §47-20-23 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §47-21-21 of said code, all relating generally to charitable bingo
3 games and charitable raffles; setting forth procedures for appealing administrative
4 sanctions against charitable bingo or charitable raffle licensee by timely petitioning the
5 Office of Tax Appeals.

Be it enacted by the Legislature of West Virginia:

1 That §47-20-23 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §47-21-21 of said code be amended and 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 of this chapter. ~~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.

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 of this chapter. upon the appeal of a licensee. Such~~
20 ~~decision shall be subject to judicial review in the same manner as other decisions of the~~
21 ~~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 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.

NOTE: The purpose of this bill is to amend the procedure by which a charitable gaming licensee may appeal the Tax Commissioner's sanctions against the licensee for violations of the charitable gaming laws, by allowing the licensee to petition the Office of Tax Appeals for an administrative hearing rather than the Tax Commissioner.

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