

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **House Bill 2932**

BY DELEGATES BARRETT AND HOUSEHOLDER

[Introduced February 8, 2019; Referred  
to the Committee on Government Organization.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §47-20-1a; to amend and reenact §47-20-2, §47-20-3, §47-20-5a, §47-20-6,  
3 and §47-20-6a of said code; to amend said code by adding thereto a new section  
4 designated §47-21-1a; to amend and reenact §47-21-2, §47-21-4, §47-21-7, §47-21-15,  
5 §47-21-20, and §47-21-28 of said code; to amend said code by adding thereto a new  
6 section designated §47-23-1a; and to amend and reenact §47-23-2, §47-23-7, §47-23-7a,  
7 §47-23-8, and §47-23-11 of said code, all relating to transferring regulation and licensing  
8 of charitable bingo, charitable raffles, and charitable raffle boards and games from the  
9 State Tax Department to the State Lottery Commission.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 20. CHARITABLE BINGO.**

### **§47-20-1a. Legislative purpose.**

1 The Legislature declares, effective July 1, 2019, that all regulation and licensing of  
2 charitable bingo is transferred from the State Tax Commissioner to the State Lottery  
3 Commissioner. The Lottery Commission shall file legislative rules as emergency rules, by July 1,  
4 2019, with amendments to reflect the transfer of administration and enforcement duties to the  
5 Lottery Commission.

### **§47-20-2. Definitions.**

1 For purposes of this article, unless specified otherwise:

2 (a) "Bingo" means the game wherein participants pay consideration for the use of one or  
3 more cards bearing several rows of numbers in which no two cards played in any one game  
4 contain the same sequence or pattern. When the game commences, numbers are selected by  
5 chance, one by one, and announced. The players cover or mark those numbers announced as  
6 they appear on the card or cards which they are using. The player who first announces that he or  
7 she has covered a predetermined sequence or pattern which had been preannounced for that

8 game is, upon verification that he or she has covered the predetermined sequence or pattern,  
9 declared the winner of that game.

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

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

14 (1) Assisting them to establish themselves in life as contributing members of society  
15 through education or religion; or

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

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

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

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

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

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

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

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

38 (e) "Commissioner" means the State Tax ~~Tax~~ Lottery Commissioner.

39 (f) "Concession" means any stand, booth, cart, counter or other facility, whether stationary  
40 or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other  
41 tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual  
42 operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the  
43 contrary, "concession" includes beverages which are regulated by and are subject to the  
44 provisions of Chapter 60 of this code: *Provided*, That in no case may the sale or the consumption  
45 of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted.

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

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

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

55 (j) "Joint bingo occasion" means a single gathering or session at which a series of one or  
56 more successive bingo games is conducted by two or more licensees.

57 (k) "Licensee" means any organization or association granted an annual, limited occasion  
58 or state fair bingo license pursuant to the provisions of this article.

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

64 (m) "Person" means any individual, association, society, incorporated or unincorporated  
65 organization, firm, partnership or other nongovernmental entity or institution.

66 (n) "Patron" means any individual who attends a bingo occasion other than an individual  
67 who is participating in the conduct of the occasion or in the operation of any concession, whether  
68 or not the individual is charged an entrance fee or plays any bingo games.

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

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

**§47-20-3. Who may hold bingo games; application for license; licenses not transferable.**

1 Any charitable or public service organization which has been in existence in this state two  
2 years prior to filing an application for a bingo license issued pursuant to §47-20-4 or §47-20-5 of  
3 this code may hold bingo occasions in accordance with the provisions of this article during the  
4 time it holds a valid license.

5 Application for a bingo license shall be made to the ~~Tax~~ Lottery Commissioner and shall  
6 be on a form which shall be supplied by him or her. The application shall contain the information  
7 required by §47-20-7 of this code and any other information which the commissioner considers  
8 necessary. An application shall be filed not less than 60 days before the date when the applicant

9 intends to hold its first bingo occasion. No bingo occasion may be held until an application filed in  
10 accordance with this article has been approved by the ~~Tax~~ Lottery Commissioner, and the bingo  
11 license has been received: *Provided*, That under no circumstances may a licensee organization  
12 conduct a bingo occasion before the sixty day filing period between the filing of the application  
13 and date of the first bingo occasion has elapsed: *Provided, however*, That the date the application  
14 is received by the ~~Tax~~ Lottery Commissioner shall begin the 60 day filing period. The ~~Tax~~ Lottery  
15 Commissioner shall send the applicant its license within five days after approval of the bingo  
16 application. If the filing period has elapsed, and the application has not been denied by the ~~Tax~~  
17 Lottery Commissioner, and the license has not been received by the applicant, the applicant may  
18 consider the application approved and begin to hold bingo occasions. The ~~Tax~~ Lottery  
19 Commissioner shall send a bingo license to the applicant within five days after the expiration of  
20 the filing period if the application has not been otherwise denied.

21 No bingo license issued pursuant to this article may be transferred.

**§47-20-5a. Venue.**

1 Any charitable or public service organization or any of its auxiliaries or other organizations  
2 otherwise affiliated with it possessing an annual or limited occasion bingo license or a super bingo  
3 license shall conduct a bingo occasion only in the county within which the organization is  
4 principally located.

5 Any licensee which, in good faith, finds itself unable to comply with this requirement shall  
6 apply to the ~~Tax~~ Lottery Commissioner for permission to conduct a bingo occasion in a location  
7 other than the county within which the organization is principally located: *Provided*, That the  
8 location shall be in a contiguous county, or, if not in a contiguous county, and not in the county  
9 where the licensee organization has its principal location, the location of the proposed bingo  
10 occasion may be no more than 30 air miles from the county within which the organization is  
11 principally located. The application shall be made on a form provided by the ~~Tax~~ Lottery

12 Commissioner and shall include the particulars of the requested change and the reasons for the  
13 change. The application shall be filed no later than 60 days before any scheduled bingo occasion.

14 For purposes of this section, the principal location of a licensee is the address of the  
15 licensee shown on the licensee's West Virginia business registration certificate.

**§47-20-6. License fee and exemption from taxes.**

1 (a) A license fee shall be paid to the ~~Tax~~ Lottery Commissioner for annual licenses in the  
2 amount of \$500, except that for volunteer or nonprofit groups who gross less than \$20,000 the  
3 fee shall be \$200 and for *bona fide* senior citizen organizations the fee is \$50. A license fee shall  
4 be paid to the ~~Tax~~ Lottery Commissioner for a limited occasion license in the amount of \$100. A  
5 license fee of \$500 shall be paid to the ~~Tax~~ Lottery Commissioner for a state fair license as  
6 provided in §47-20-22 of this code. All revenue from said license fee shall be deposited in the  
7 special revenue account established under the authority of §11-9-2a of this code and used to  
8 support the investigatory activities provided for in said section. The license fee imposed by this  
9 section is in lieu of all other license or franchise taxes or fees of this state and no county or  
10 municipality or other political subdivision of this state is empowered to impose a license or  
11 franchise tax or fee.

12 (b) The gross proceeds derived from the conduct of a bingo occasion are exempt from  
13 state and local business and occupation taxes, income taxes, excise taxes and all special taxes.  
14 The licensee is exempt from payment of consumers sales and service taxes and use taxes on all  
15 purchases for use or consumption in the conduct of a bingo occasion and is exempt from  
16 collecting consumers sales taxes on any admission fees and sales of bingo cards: *Provided*, That  
17 the exemption provided in this subsection does not apply to state fair bingo proceeds.

**§47-20-6a. Super bingo license.**

1 Any charitable or public service organization may, upon payment of a \$5,000 license fee,  
2 apply to the ~~Tax~~ Lottery Commissioner for issuance of an annual super bingo license. All revenue  
3 from the license fee shall be deposited in the special revenue account established under the

4 authority of §11-9-2a of this code and used to support the investigatory activities provided for in  
5 that section. The ~~Tax~~ Lottery Commissioner shall promulgate legislative rules in accordance with  
6 §29A-3-1 *et seq.* of this code specifying those organizations which qualify as charitable or public  
7 service organizations.

8 A holder of a super bingo license may conduct one super bingo occasion each month  
9 during the period of the license at which up to \$50,000 in prizes may be awarded, notwithstanding  
10 the \$10,000 limitation on prizes specified in §47-20-10 of this code.

11 A charitable or public service organization that has a regular or limited occasion bingo  
12 license may apply for a super bingo license.

## **ARTICLE 21. CHARITABLE RAFFLES.**

### **§47-21-1a. Legislative purpose.**

1 The Legislature declares, effective July 1, 2019, that all regulation and licensing of  
2 charitable raffles is transferred from the State Tax Commissioner to the State Lottery  
3 Commissioner. The Lottery Commission shall file legislative rules as emergency rules, by July 1,  
4 2019, with amendments to reflect the transfer of administration and enforcement duties to the  
5 Lottery Commission.

### **§47-21-2. Definitions.**

1 For purposes of this article, unless specified otherwise:

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

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

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

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

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; or

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

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

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

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

17           (b) "Charitable or public service organization" means a bona fide, not for profit, tax-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           (c) "Commissioner" means the State ~~Tax~~ Lottery Commissioner.

25           (d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary  
26 or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other  
27 tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual  
28 operating the facility. Notwithstanding anything contained in §60-71-2(a)(2) of this code to the  
29 contrary, "concession" includes beverages which are regulated by and shall be subject to the  
30 provisions of Chapter 60 of this code.

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

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

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

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

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

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

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

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

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

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

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

61 (n) “Raffle” means a game involving the selling or distribution of paper tickets, not  
62 enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket  
63 reader or other electronic or mechanical device of whatever design or function, entitling the holder  
64 or holders to participate in a raffle game for a chance on a prize or prizes. This subsection shall  
65 not be interpreted to prevent the use of:

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

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

70 (3) Accounting and recordkeeping software for the purpose of maintaining accounting and  
71 reporting records of the licensee, and the computer for running those applications, not used in the  
72 play of any game.

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

75 (p) “Tax-exempt association or organization” means an association or organization which  
76 is, and has received from the “Internal Revenue Service” a determination letter that is currently in  
77 effect stating that the organization is exempt from federal income taxation under subsection  
78 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or  
79 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under  
80 subsection 527(a) of said code.

**§47-21-4. Who may hold raffles; application for license; licenses not transferable.**

1 (a) Except as provided in §47-21-3 of this code, only persons, as defined in §47-21-2 of  
2 this code, who are residents of this state and who are active members of any charitable or public  
3 service organization which has been in existence in this state for at least two years prior to filing

4 an application for a raffle license issued pursuant to §47-21-5 or §47-21-6 of this code may hold  
5 raffle occasions in accordance with the provisions of this article during the time it holds a valid  
6 license.

7 (b) Application for a raffle license shall be made to the ~~Tax~~ Lottery Commissioner and shall  
8 be on a form supplied by him or her. The application shall contain the information required by  
9 §47-21-8 of this code and any other information which the commissioner considers necessary.  
10 No raffle may be held and no tickets may be sold pursuant to this article until the raffle application  
11 has been approved by the ~~Tax~~ Lottery Commissioner and the license has been received by the  
12 applicant: *Provided*, That no raffle occasion may be held and no raffle tickets may be sold until a  
13 sixty day filing period, which is that time period between the receipt of that application by the ~~Tax~~  
14 Lottery Commissioner and the first raffle occasion, has expired: *Provided, however*, That the ~~Tax~~  
15 Lottery Commissioner shall send the applicant its license within five days after the application is  
16 approved. If the 60 day filing period has expired and the application has not been denied and the  
17 raffle license has not been received by the applicant, the applicant may consider the application  
18 approved and begin to sell tickets for the raffle or hold the raffle occasion. The ~~Tax~~ Lottery  
19 Commissioner shall send the applicant its license within five days after the expiration of the filing  
20 period if the application has not been otherwise denied.

21 (c) For purposes of this article, any application for an annual license or a limited occasion  
22 license received prior to the effective date of this article is considered filed on the effective date.

23 (d) No raffle license issued pursuant to this article may be transferred.

**§47-21-7. License fee and exemption from taxes.**

1 (a) A license fee shall be paid to the ~~Tax~~ Lottery Commissioner for annual licenses in the  
2 amount of \$500. A license fee shall be paid to the ~~Tax~~ Lottery Commissioner for a limited occasion  
3 license in the amount of \$50. All revenue from said license fee shall be deposited in the special  
4 revenue account established under the authority of §11-9-2a of this code and used to support the  
5 investigatory activities provided for in said section. The license fee imposed by this section is in

6 lieu of all other license or franchise taxes or fees of this state and no county or municipality or  
7 other political subdivision of this state is empowered to impose a license or franchise tax or fee  
8 on any raffle or raffle occasion.

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

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

1 (a) The reasonable, necessary and actual expenses incurred in connection with the  
2 conduct of raffle occasions, not to exceed 25 percent of the gross proceeds collected during a  
3 license period, may be paid out of the gross proceeds of the conduct of raffle, including, but not  
4 limited to:

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

9 (2) The cost of custodial services;

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

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

13 (5) The cost of hiring security personnel, licensed pursuant to the provisions of article §30-  
14 18-1 *et seq.* of this code; and

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

18           (b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in  
19 §47-21-11 of this code, may be paid out of the gross proceeds of the conduct of raffle.

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

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

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

41 contract is grounds for revocation or suspension of the charitable raffle license and for refusal by  
42 the ~~Tax~~ Lottery Commissioner to renew the charitable raffle license.

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

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

1 (a) Any person who knowingly violates any provisions of this article, other than the  
2 provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, 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) On and after July 1, 2010, any person licensed under this article, or any person who  
7 operates a raffle without a license under §47-21-3 of this code, who is in possession of any  
8 electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or  
9 mechanical device of whatever design or function, other than those machines and apparatus  
10 allowed under §47-21-2(n) of this code, that is used or designed to be used as part of a licensed  
11 raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional  
12 facility for a term of not less than one year nor more than three years, and fined not less than

13 \$50,000 nor more than \$100,000, for each electronic or mechanical raffle ticket dispenser, raffle  
14 ticket reader or other electronic or mechanical device of whatever design or function, other than  
15 those machines and apparatus allowed under §47-21-2(n) of this code, in the person's actual or  
16 constructive possession in this 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 video electronic or  
18 mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of  
19 whatever design or function in the person's actual or constructive possession in this state.

20 (c) A licensee may also have his or her license suspended or revoked for failure to comply  
21 with this article and may be required to forfeit the machines or devices to the ~~Tax~~ Lottery  
22 Commissioner for destruction.

23 (d) In addition to any other penalty provided by law, any person, licensed or unlicensed  
24 under this article, who violates any provisions of this article, or who fails to perform any of the  
25 duties or obligations created and imposed upon them by the provisions of this article, other than  
26 the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is subject  
27 to a civil penalty as may be determined by the ~~Tax~~ Lottery Commissioner in an amount not to  
28 exceed \$10,000.

**§47-21-28. State fair raffle license; rules and regulations.**

1 The West Virginia state fair board may apply annually to the ~~Tax~~ Lottery Commissioner  
2 for a state fair raffle license to provide for the conduct of raffle occasions at the state fair. The  
3 license shall permit the state fair board to have one or more persons conduct raffle occasions at  
4 the state fair who have conducted raffle occasions on a regular basis for a least one year prior to  
5 the date of the state fair board's application. A license fee of \$500 shall be paid to the ~~Tax~~ Lottery  
6 Commissioner for the state fair raffle license. The provisions of §47-21-11, §47-21-12, §47-21-  
7 14, §47-21-15 or §47-21-26 of this code do not apply to a state fair raffle license. No state fair  
8 raffle license may be issued unless the application includes a copy of any lease or agreement  
9 entered into between the state fair board and the persons who are to conduct raffle occasions at

10 the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent  
11 with or in violation of the provisions of this article, to govern the holding of raffle occasions at the  
12 state fair.

## **ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.**

### **§47-23-1a. Legislative Purpose.**

1 The Legislature declares, effective July 1, 2019, that all regulation and licensing of  
2 charitable raffle boards and games is transferred from the State Tax Commissioner to the State  
3 Lottery Commissioner. The Lottery Commission shall file legislative rules as emergency rules, by  
4 July 1, 2019, with amendments to reflect the transfer of administration and enforcement duties to  
5 the Lottery Commission.

### **§47-23-2. Definitions.**

1 For purposes of this article, unless specified otherwise:

2 (a) "Commissioner" means ~~Tax~~ Lottery Commissioner of the State of West Virginia, or his  
3 or her delegate.

4 (b) "Retail value" means the actual consideration paid to the wholesaler by the retailer for  
5 any raffle boards or games.

6 (c) "Person" means any individual, association, society, incorporated or unincorporated  
7 organization, firm, partnership or other nongovernmental entity or institution.

8 (d) "Retailer" means every person engaged in the business of making retail sales of raffle  
9 chances except a charitable or public service organization authorized to conduct raffles pursuant  
10 to §47-21-3 of this code.

11 (e) "Charitable raffle board" or "charitable raffle game" means: (1) A board or other device  
12 that has many folded printed slips to be pulled from the board or otherwise distributed without a  
13 board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player  
14 to a designated prize; (2) a series of paper cards with perforated break-open tabs, a face value  
15 of which is covered or otherwise hidden from view to conceal one or more numbers, letters or

16 symbols, which, on payment of a nominal sum, entitles the player to obtain a chance to a  
17 designated prize; or (3) such other similar game which may be defined by the State Tax Lottery  
18 Commissioner by legislative rule.

19 (f) "Sale" means the transfer of the ownership of tangible personal property for a  
20 consideration.

21 (g) "Verification" means a unique manufacture identifiable serial number which is required  
22 to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form  
23 of identification as may be prescribed by the Tax Lottery Commissioner upon a showing of undue  
24 hardship by the taxpayer: *Provided*, That such other form of identification shall be prescribed by  
25 rule in accordance with the provisions of §29A-3-1 *et seq.* of this code.

26 (h) "Wholesaler" or "distributor" means any person or entity engaged in the wholesale  
27 distribution of charitable raffle boards or games or similar boards or devices, as defined by the  
28 commissioner, and licensed under the provisions of this article, to distribute said devices to  
29 charitable raffle boards or games retailers as defined in this article. It also includes anyone who  
30 is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards  
31 or games for distribution in this state: *Provided*, That no license taxes or other fees provided for  
32 in this section may be charged to any newspaper or other printing or duplicating operation not  
33 regularly engaged in the business of manufacturing, packaging, preparing or repackaging  
34 charitable raffle boards or games where the gross sales of such printing or duplicating operation  
35 from such activity does not exceed \$7,500 per calendar year and who is donating such items or  
36 services to a nonprofit entity without compensation may not be considered a "wholesaler" or  
37 "distributor" under this article.

**§47-23-7. Surety bonds required; release of surety; new bond.**

1 The commissioner may require wholesalers and distributors to file continuous surety bond  
2 in an amount to be fixed by the commissioner except that the amount shall not be less than  
3 \$1,000. Upon completion of the filing of a surety bond an annual notice of renewal, only, shall be

4 required thereafter. The surety must be authorized to engage in business within this state. The  
5 bond shall be conditioned upon faithfully complying with the provisions of this article including the  
6 filing of the returns and payment of all fees prescribed by this article.

7 Any surety on a bond furnished hereunder shall be released and discharged from all  
8 liability accruing on such bond after the expiration of 60 days from the date the surety shall have  
9 lodged, by certified mail, with the ~~Tax~~ Lottery Commissioner a written request to be discharged.  
10 This shall not relieve, release or discharge the surety from liability already accrued or which shall  
11 accrue before the expiration of the sixty-day period. Whenever any surety shall seek release as  
12 herein provided, it shall be the duty of the wholesaler or distributor to supply the commissioner  
13 with another bond.

**§47-23-7a. Requirement of wholesalers and distributors to be licensed to do business in  
state; resident agent requirement.**

1 (a) Any wholesaler or distributor supplying charitable raffle boards or games to retailers in  
2 this state shall be registered to do business in this state pursuant to the provisions of §11-12-1 *et*  
3 *seq.* of this code.

4 (b) Nonresidents otherwise complying with the provisions of this article may be licensed  
5 as wholesalers or distributors of charitable raffle boards or games upon designating to the ~~Tax~~  
6 Lottery Commissioner a resident agent upon whom notices, orders or other communications  
7 issued pursuant to this article may be served and upon whom process may be served.

**§47-23-8. How fee paid; reports required; due date; records to be kept; inspection of  
records and stocks; examination of witnesses, summons, etc.**

1 The retail value fee imposed by §47-23-3 of this code shall be paid by each licensed  
2 wholesaler or distributor to the commissioner on or before April 20, July, October and January for  
3 the preceding three calendar months. The measure of the fee on the retail value of charitable  
4 raffle boards or games shall be determined by multiplying the total amount of the retail value of  
5 all charitable raffle boards and games sold by a wholesaler or distributor to retailers during the

6 said three-month period by 20 percent. Said fee shall be in addition to any tax imposed pursuant  
7 to the provisions of §11-15-1 *et seq.* of this code. All fees due and owing to the commissioner by  
8 reason of this article, if paid after the due dates required by this section, shall be subject to the  
9 provisions of §11-10-1 *et seq.* of this code. Each wholesaler or distributor shall provide with each  
10 quarterly payment of fees a return covering the business transacted in the previous three calendar  
11 months and providing such other information as the commissioner may deem necessary for the  
12 ascertainment or assessment of the fee imposed by this article. Such return shall be signed under  
13 penalty of perjury on such forms as the ~~Tax~~ Lottery Commissioner may prescribe and the  
14 wholesaler or distributor shall at the time of filing remit all fees owed or due.

15 The returns prescribed herein are required, although a fee might not be due or no business  
16 transacted for the period covered by the return.

17 Each person required to file a return under this article shall make and keep such records  
18 as shall be prescribed by the commissioner that are necessary to substantiate the returns required  
19 by this article, including, but not limited to, invoices, serial numbers or other verification,  
20 inventories, receipts, disbursements and sales, for a period of time not less than three years.

21 Unless otherwise permitted, in writing, by authority of the commissioner, each delivery  
22 ticket or invoice for each purchase or sale of charitable raffle boards or games must be recorded  
23 upon a serially numbered invoice showing the name and address of the seller and the purchaser,  
24 the point of delivery, the date, quantity, serial number and price of the product sold and the fee  
25 must be set out separately, and such other reasonable information as the commissioner may  
26 require. These invoicing requirements also apply to cash sales and a person making such sales  
27 must maintain such records as may be reasonably necessary to substantiate his or her return.

28 In addition to the commissioner's powers set forth in §11-10-5 of this code, the  
29 commissioner shall have authority to inspect or examine the stock of charitable raffle boards and  
30 games kept in and upon the premises of any person where charitable raffle boards and games  
31 are placed, stored or sold, and he or she shall have authority to inspect or examine the records,

32 books, papers and any equipment or records of manufacturers, wholesalers and distributors or  
33 any other person for the purpose of determining the quantity of charitable raffle boards and games  
34 acquired or disbursed to verify the truth and accuracy of any statement or return and to ascertain  
35 whether the fee imposed by this article has been properly paid.

36 In addition to the commissioner's powers set forth in §1-10-5 of this code, and as a further  
37 means of obtaining the records, books and papers of a manufacturer, wholesaler, distributor or  
38 any other person and ascertaining the amount of fees and returns due under this article, the  
39 commissioner shall have the power to examine witnesses under oath; and if the witness shall fail  
40 or refuse at the request of the commissioner to grant access to the books, records or papers, the  
41 commissioner shall certify the facts and names to the circuit court of the county having jurisdiction  
42 of the party and such court shall thereupon issue summons to such party to appear before the  
43 commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be  
44 continued as the occasion may require for good cause shown and give such evidence and lay  
45 open for inspection such books and papers as may be required for the purpose of ascertaining  
46 the amount of fee and returns due, if any.

**§47-23-11. Administration; rulemaking; required verification.**

1 (a) The commissioner shall propose for promulgation, rules to administer the provisions  
2 of this article in accordance with the provisions of Chapter 29A of this code: *Provided*, That the  
3 initial promulgation of rules to administer the provisions of this article shall be by emergency rule.  
4 Additionally, the commissioner shall promulgate a rule which requires that every charitable raffle  
5 board or game shall each bear verification, as defined by §47-23-2 of this code, printed by a  
6 manufacturer on each ticket in a game unless, upon application by the taxpayer showing undue  
7 hardship, the Tax Lottery Commissioner consents to waive this requirement in favor of some other  
8 form of verification.

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

11           (c) The commissioner may suspend, revoke or refuse to renew any license issued  
12 hereunder for a material failure to maintain the records or file the reports required by this article  
13 or administrative rule if the commissioner finds that said failure will substantially impair the  
14 commissioner's ability to administer the provisions of this article with regard to said licensee.

15           (d) The burden of proof in any administrative or court proceeding is on the applicant to  
16 show cause why a charitable raffle boards or games wholesaler's or distributor's license should  
17 be issued or renewed and on the licensee to show cause why its license should not be revoked  
18 or suspended.

NOTE: The purpose of this bill is to transfer the regulation and licensing of charitable bingo, charitable raffles, and charitable raffle boards and games from the State Tax Department to the State Lottery Commission.

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