

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 232**

SENATOR WELD, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 10, 2020]



1 A BILL to amend and reenact §47-21-2, §47-21-20, and §47-21-26 of the Code of West Virginia,  
2 1931, as amended, all relating to charitable raffles; removing outdated prohibitions against  
3 electronic or mechanical ticket dispensers and readers and associated digital fundraising  
4 platforms; limiting types and numbers of mechanical or electronic ticket dispenser  
5 systems; and removing restriction that a licensee may only use raffle equipment obtained  
6 from another licensee.

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

**ARTICLE 21. CHARITABLE RAFFLES.**

**§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;

6 ~~or~~

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

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

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

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

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

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

18 (b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt,  
19 benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or  
20 eleemosynary, incorporated or unincorporated association or organization; or a volunteer fire  
21 department, rescue unit, or other similar volunteer community service organization or association;  
22 but does not include any nonprofit association or organization, whether incorporated or not, which  
23 is organized primarily for the purposes of influencing legislation or supporting or promoting the  
24 campaign of any single candidate for public office.

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

26 (d) "Concession" means any stand, booth, cart, counter, or other facility, whether  
27 stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes  
28 or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an  
29 individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code  
30 to the contrary, "concession" includes beverages which are regulated by and ~~shall be~~ are subject  
31 to the provisions of chapter 60 of this code.

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

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

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

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

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

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

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

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

57 (m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as  
58 defined in subdivision (p) of this section, incorporated or unincorporated association or  
59 organization which is organized and functions exclusively to directly benefit a number of people  
60 as provided in subparagraphs (1) through (7), inclusive, subdivision (a), of this section. "Qualified  
61 recipient organization" includes, without limitation, any licensee which is organized and functions  
62 exclusively as provided in this subdivision.

63 (n) "Raffle" means a game involving the selling or distribution of paper tickets, ~~not~~  
64 ~~enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket~~  
65 ~~reader or other electronic or mechanical device of whatever design or function~~ entitling the holder  
66 or holders to participate in a raffle game for a chance on a prize or prizes; Provided, That any  
67 mechanical or electronic raffle ticket system of whatever design or function is prohibited except

68 as provided in subdivision (2) of this subsection. This subsection shall not be interpreted to  
69 prevent the use of:

70 (1) Hand-cranked or motorized drum mixers which randomly mix tickets or other indicia  
71 together for the purpose of allowing the hand drawing of a ticket or winning indicia;

72 (2) Mechanical or electronic ticket dispenser systems that produce paper tickets with  
73 randomly generated indicia that cannot be redeemed electronically, cannot be used for any other  
74 purpose than a one-time raffle, and are limited as follows:

75 (A) No more than three electronic ticket dispensing units in facilities with a capacity of  
76 fewer than 3,000 people; or

77 (B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted  
78 in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10  
79 dispensing units;

80 ~~(2)~~ (3) A cash register for handling proceeds of sales and other ordinary cash-handling  
81 and record-keeping functions of a raffle licensee; or

82 ~~(3)~~ (4) Accounting and record-keeping software for the purpose of maintaining accounting  
83 and reporting records of the licensee, and the computer for running those applications ~~not used~~  
84 ~~in the play of any game.~~

85 (o) "Raffle occasion" or "occasion" means a single gathering or session at which a series  
86 of one or more successive raffles is conducted by a single licensee.

87 (p) "Tax-exempt association or organization" means an association or organization which  
88 is, and has received from the Internal Revenue Service a determination letter that is currently in  
89 effect stating that the organization is exempt from federal income taxation under subsection  
90 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or  
91 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under  
92 subsection 527(a) of ~~said~~ that code.

**§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~~ system of whatever design or function, other than those machines and  
10 apparatus allowed under §47-21-2(n) of this code, that is used or designed to be used as part of  
11 a licensed raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
12 correctional facility for a term of not less than one year nor more than three years, and fined not  
13 less than \$50,000 nor more than \$100,000, for each electronic or mechanical raffle ticket  
14 ~~dispenser, raffle ticket reader or other electronic or mechanical device~~ system of whatever design  
15 or function, other than those machines and apparatus allowed under §47-21-2(n) of this code, in  
16 the person's actual or constructive possession in this state. For a person other than an individual,  
17 upon conviction, the fine may not be less than \$100,000 nor more than \$500,000 for each video  
18 electronic or mechanical raffle ticket ~~dispenser, raffle ticket reader or other electronic or~~  
19 ~~mechanical device~~ system of whatever design or function in the person's actual or constructive  
20 possession in this state.

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

24           (d) In addition to any other penalty provided by law, any person, licensed or unlicensed  
25 under this article, who violates any provisions of this article, or who fails to perform any of the  
26 duties or obligations created and imposed upon them by the provisions of this article, other than  
27 the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is subject  
28 to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed  
29 \$10,000.

**§47-21-26. Restrictions on use of raffle equipment.**

1           A licensee may use only raffle equipment which it owns, ~~or~~ which it borrows without  
2 compensation, or which it leases for a reasonable and customary amount ~~from another licensee~~.