

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **ENGROSSED**

#### **Committee Substitute**

**for**

#### **House Bill 2491**

By Delegates Crouse, D. Smith, Jennings, Moore,  
Horst, Heckert, Phillips, Hornby, Street, and Kyle

[Originating in the Committee on the Judiciary;

Reported March 27, 2025]



1 A BILL to amending and reenacting §47-21A-1, §47-21A-2, §47-21A-3, §47-21A-4, §47-21A-5,  
2 §47-21A-8, and §47-21A-13 of the Code of West Virginia, 1931, as amended, relating to  
3 establishing that legislative intent that institutions of higher education have a need for  
4 raising funds and granted the privilege of holding online raffles, relating to amending and  
5 adding definitions relating to the allowance that institutions of higher education are subject  
6 to this article, relating to allowing institutions of higher education to be authorized to  
7 conduct certain online raffles without a license, relating to designating that an institution of  
8 higher education may hold an online raffle, apply for a license including an annual license,  
9 relating to striking the requirement that online charitable raffle licensees utilize a geo-  
10 location or geo-fencing technology licensee, relating to striking language that required a  
11 licensee to maintain in the state of West Virginia its servers used to transmit information for  
12 the purposes of patron participation, relating to providing that charitable online raffle  
13 occasions are not considered as a sports wagering activity or an interactive wagering  
14 activity, relating to gross proceeds from an institution of higher education's charitable  
15 online raffle occasion shall be exempt from certain taxes, relating to the expanded and  
16 other information that institutions of higher education must provide in an application for a  
17 license to conduct charitable online raffle occasions, and relating to the net proceed  
18 disbursement that must occur for proceeds generated by an online charitable raffle  
19 occasion conducted by an institution of higher education.

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

<b>ARTICLE</b>	<b>21A.</b>	<b>ONLINE</b>	<b>CHARITABLE</b>	<b>RAFFLES.</b>
<b>§47-21A-1.</b>		<b>Legislative</b>		<b>intent.</b>

1 The Legislature, in recognition of the need for charitable and public service organizations,  
2 and institutions of higher education, to have for a practicable way of raising funds by means of the  
3 internet, declares its intent to grant the privilege of holding online raffles to those organizations as  
4 provided in this article.

**§47-21A-2.**

**Definitions.**

For purposes of this article, unless specified otherwise:

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

(1) Contributing to educational or religious purposes;

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

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

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

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

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

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

(8) Providing or supporting any political party executive committee; or

(9) Fostering national, collegiate, or international amateur sports competition.

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

"Commissioner" means the State Tax Commissioner.

"Conduct" means to direct the actual holding of an online raffle by activities including, but not limited to, selling tickets, collecting money, drawing or arranging for the drawing of the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

"Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of an online raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21A-13 of this code.

"Gross proceeds" means all moneys collected or received from the conduct of an online raffle held by a licensee during a license period.

"Institution of higher education" has the same meaning as contained in §21A-1A-21 of this code: *Provided*, That for purposes of this article an institution of higher education must have an athletic department that is governed by the National Collegiate Athletic Association (NCAA) and are designated by the NCAA as having a Division I or Division II athletics department.

"Institution of higher education's athletics department activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by providing broad financial support to an institution of higher education's athletics department including all affiliated and associated nonprofit corporations or other entities, trusts, or Name Image Likeness (NIL) collectives.

"Licensee" means any institution of higher education, or charitable or public service organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

"Net proceeds" means all moneys collected or received from the conduct of an online raffle or online raffles at occasions held by a licensee during a license period after payment of the online raffle expenses authorized by §47-21A-11, §47-21A-12, and §47-21A-13 of this code.

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

53 "Patron" means any individual who participates in an online raffle by purchasing an online  
54 raffle ticket other than an individual who is participating in the conduct of the online raffle.

55 "Platform provider" means any third-party entity that contracts by written agreement with a  
56 licensee to host, conduct, or otherwise administer an online raffle by using a software system, web  
57 application, method, or other process for the purpose of conducting online raffles over the Internet.

58 "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt,  
59 incorporated or unincorporated association or organization which is organized exclusively for  
60 charitable or public services activities or endeavors.

61 "Online Raffle" has the same meaning as "raffle" as defined in §47-21-2 of this code but  
62 conducted using a software system, web application, method, or other process for the purpose of  
63 conducting online raffles over the Internet.

64 "Online raffle occasion" or "occasion" means a single online session at which a series of  
65 one or more successive online raffles is conducted by a single licensee.

66 "Tax-exempt association or organization" means an association or organization which is,  
67 and has received from the Internal Revenue Service a determination letter that is currently in effect  
68 stating that the organization is, exempt from federal income taxation under subsection 501(a) and  
69 described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the  
70 Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection  
71 527(a) of that code.

72 "Virtually Present" means live, real-time availability by online or other electronic means and  
73 includes, but is not limited to, audio or video appearance or by an instant, live chat or messaging  
74 program.

**§47-21A-3. Authorizing the conduct of certain online raffles without a license.**

1           Notwithstanding any other provisions of this article to the contrary, any charitable or public  
2   service organization, or institution of higher education, which has been in existence in this state for  
3   at least one year may conduct online raffles without compliance with the licensing provisions of  
4   this article: *Provided*, That any prize awarded in any single online raffle in an online raffle occasion  
5   may not exceed in \$4,000 value: *Provided, however*, That the cumulative gross proceeds derived  
6   from the conduct of online raffle occasions by the charitable or public service organization, or  
7   institution of higher education, may not exceed \$15,000 during any calendar year: *Provided*  
8   *further*, That the charitable or public service, or institution of higher education, are is not subject to  
9   the record keeping provisions of §47-21A-14 of the code but shall maintain a separate accounting  
10   for the operation of online raffles. All records required by this section shall be maintained for at  
11   least three calendar years and shall be available for reasonable inspection by the commissioner.

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

1           (a) Except as provided in §47-21A-3 of this code, only persons who are residents of this  
2   state and who are active members of any charitable or public service organization, or is employed,  
3   or contracted, by an athletic department of an institution of higher education, which has been in  
4   existence in this state for at least two years prior to filing an application for an online raffle license  
5   issued pursuant to §47-21A-5 and §47-21A-6 of the code may hold online raffle occasions in  
6   accordance with the provisions of this article and only during the time it holds a valid license.

7           (b) ~~The~~ A charitable or public service organization, or an institution of higher education,  
8   may applies apply for an online raffle license to the Tax Commissioner and the application shall be  
9   on a form supplied by him or her. The application shall contain the information required by §47-  
10   21A-8 of the code and any other information which the commissioner considers necessary. An  
11   online raffle may not be held and online raffle tickets may not be sold pursuant to this article until  
12   the online raffle application has been approved by the Tax Commissioner and the license has been  
13   received by the applicant: *Provided*, That an online raffle occasion may not be held and online  
14   raffle tickets may not be sold until a 60-day filing period, which is that time period between the

receipt of that application by the Tax Commissioner and the first online raffle occasion, has expired: *Provided, however*, That the Tax Commissioner shall send the applicant its license within five days after the application is approved. If the 60-day filing period has expired and the application has not been denied and the online raffle license has not been received by the applicant, the applicant may consider the application approved and begin to sell tickets for the online raffle or hold the online raffle occasion. The Tax Commissioner shall send the applicant its license within five days after the expiration of the filing period if the application has not been otherwise denied.

(c) An online raffle license issued pursuant to this article may not be transferred.

**§47-21A-5. Annual license; online raffle occasion not considered a sports wagering activity; online raffle occasion not considered an interactive wagering activity; conditions on holding of online raffles.**

(a) A charitable or public service organization, or institution of higher education, or any of its auxiliaries, affiliated nonprofit corporations or other entities, trusts, collectives, or other organizations otherwise affiliated with it, may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization, or institution of higher education, and all of its auxiliaries, affiliated nonprofit corporations or other entities, trusts, collectives, or other associations or organizations otherwise affiliated with it: *Provided*, That for purposes of this section, the various branches, chapters, or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to provide for the manner for determining to which organization, whether the parent organization, an affiliate, or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance. Charitable or public service organizations, or institution of higher education, may not hold a joint online raffle occasion under any annual licenses.



15           ~~(b) A licensee shall utilize geo-location or geo-fencing technology to ensure that online~~  
16 ~~charitable raffles patrons are located in the state of West Virginia. A licensee shall maintain in the~~  
17 ~~state of West Virginia its servers used to transmit information for the purposes of patron~~  
18 ~~participation.~~

19           (c) Any online raffle occasion, conducted by a licensee which holds an annual license and  
20 is an institution of higher education, shall not be considered as a sports wagering activity as  
21 contemplated in §29-22D-1 et seq. of this code.

22           (d) Any online raffle occasion, conducted by a licensee which holds an annual license and  
23 is an institution of higher education, shall not be considered as an interactive wagering activity as  
24 contemplated in §29-22E-1 et seq. of this code.

25           ~~(e)~~ (e) The Tax Commissioner shall provide on his or her website a list of every active and  
26 approved licensee to conduct an online raffle occasion. A licensee shall provide a conspicuous  
27 hyperlink on any online raffle ticket that is purchased by a patron to the Tax Commissioner's  
28 website. A licensee shall conspicuously display at its physical location, that was provided on its  
29 application, the approved license to conduct an online raffle.

**§47-21A-6. Limited occasion license; conditions on holding of online raffles.**

1           (a) Two or more charitable or public service organizations, or institutions of higher  
2 education, may hold a joint online raffle occasion provided each participating organization has  
3 been granted a limited occasion online raffle license for the jointly held occasion: *Provided*, That a  
4 licensee which holds an annual license may not obtain more than one limited occasion license.

5           (b) A limited occasion license is valid only for the time period specified in the application  
6 and entitles only the licensee to hold two online raffle occasions during the specified time period  
7 which may not exceed six months from the date of issuance of the limited occasion license.

8           (c) Subject to the limitations set forth in this section for charitable or public service  
9 organization, or an institution of higher education having an annual license, a charitable or public  
10 service organization, or an institution of higher education and all of its auxiliaries or other

11 associations or organizations otherwise affiliated with it, including but not limited to any affiliated  
12 nonprofit corporations or other entities, trusts, collectives, may be granted only three limited  
13 occasion licenses per year in the aggregate. For purposes of this section the various branches,  
14 chapters, or lodges of any national association or organization or local churches of a nationally  
15 organized church are not considered affiliates or auxiliaries of each other. The commissioner shall  
16 by rulemaking provide the manner for determining to which organization, whether the parent  
17 organization, an affiliate, or an auxiliary, the three licenses allowed under this section are granted.

18 (d) The Tax Commissioner shall provide a hyperlink on its website that will display a list of  
19 every active and approved licensee to conduct an online raffle occasion. A licensee shall provide  
20 this hyperlink on any online raffle ticket that is purchased by a patron. A licensee shall  
21 conspicuously display at its physical location, that was provided on its application, the approved  
22 license to conduct an online raffle.

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

1 (a) A license fee shall be paid to the Tax Commissioner for annual licenses in the amount of  
2 \$500. A license fee shall be paid to the Tax Commissioner for a limited occasion license in the  
3 amount of \$50. All revenue from the license fees shall be deposited in the special revenue account  
4 established under the authority of §11-9-2a of this code and used to support the investigatory  
5 activities provided for in that section. The license fee imposed by this section is in lieu of all other  
6 license or franchise taxes or fees of this state and a county or municipality or other political  
7 subdivision of this state may not impose a license or franchise tax or fee on any online raffle or  
8 online raffle occasion.

9 (b) The gross proceeds derived from the conduct of an online raffle occasion are exempt  
10 from state and local business and occupation taxes, income taxes, excise taxes, and all special  
11 taxes. Any charitable or public service organization, or institution of higher education conducting  
12 an online raffle occasion pursuant to the provisions of this article is exempt from payment of  
13 consumers sales and service taxes, use taxes, and all other taxes on all purchases for use or

consumption in the conduct of an online raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of online raffle tickets.

**§47-21A-8. Information required in application.**

An application for an online raffle license shall include the following information:

(a) The name of the applicant and the name and headquarter's address of any state or national organization of which the applicant is a local branch or lodge;

(b) The address and telephone number of the applicant organization, or institution of higher education, if any, and if the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of the organization shall be supplied;

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded: Provided, That an application submitted by an institution of higher education shall contain the names and addresses of two or more employees of the institution of higher education, or two or more persons contracted by the institution of higher education who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; and the names and addresses of the highest elected officer of the licensee, if any, and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present

when the prizes are awarded: Provided, That an application submitted by an institution of higher education shall contain the names and addresses of three or more employees of the institution of higher education, or three or more persons contracted by the institution of higher education who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; and the names and addresses and telephone numbers of the highest elected officer of the licensee, if any, and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers and names are drawn, announced, posted, and verified and present when the prizes are awarded;

(e) The address and the location of any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet. A copy of all written agreements between the licensee and the platform provider providing these services shall specifically provide a statement of all costs and fees to be incurred by the licensee for receiving these services by the platform provider. A copy of any written agreements shall be provided to the Tax Commissioner;

(f) Information required by the commissioner to satisfy him or her that the applicant meets the requirements of:

(1) Being a charitable or public service organization, or an institution of higher education as defined by this article; and

(2) Being in existence in this state for at least one year prior to filing an application for an online raffle license.

(g) Designate the date or dates and the time or times when the online raffle occasions will be held: Provided, That in addition to these initial disclosures of online raffle occasions an institution of higher education shall provide to the commissioner a written list of online raffle occasions that will occur each month, included in this list shall be a designation of the date or dates and the time or times when the raffle occasions will be held;

(h) State whether the applicant has ever had a previous application for any online raffle or raffle license refused, or whether any previous online raffle license or raffle license has been revoked or suspended;

(i) State the charitable or public service, or institution of higher education's athletics department's purpose, or purposes, activity or endeavor for which the online raffle proceeds will be expended;

(j) Provide statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct the online raffle;

(2) That they are required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and that a violation of the provisions may result in suspension or revocation of the online raffle license or other raffle license and denial of applications for subsequent online raffle licenses or raffle licenses;

(k) Provide a sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his or her knowledge;

(l) Provide a list and description of estimated expenses to be incurred in connection with the holding of the online raffle occasions and the name and address of each payee;

(m) A list of the names and addresses of all officers and members of the board of directors, governors or trustees, and any employees of an institution of higher education's athletics

department directly involved with online raffle occasions, if any, of the an applicant organizations;  
and

(n) Any other necessary and reasonable information which the commissioner may require.

**§47-21A-13. Payment of reasonable expenses from proceeds; net proceeds disbursement.**

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of online raffle occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of the online raffle, including, but not limited to:

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

(2) The cost to the licensee organization for equipment and supplies used to conduct the online raffle occasion;

(3) The cost to the licensee organization for advertising the online raffle occasion;

(4) The costs involved in the licensee using technology, Internet service providers, servers, or other necessary infrastructure by which to advertise and conduct the online raffle or online raffle occasion;

(5) The costs relating to any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet.

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

(c) The licensee shall expend all net online raffle proceeds and any interest earned on the net online raffle proceeds for the purposes stated in the application of an institution of higher education, or for the purposes stated in the application of a charitable or public service purposes organization, ~~stated in the application~~ within one year after the expiration of the license under which the online raffle occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for an online raffle license for permission to apply any or all of its net proceeds to directly support a charitable or public service, or an institution of higher education's athletics department, activity or endeavor which it sponsors.

(d) Gross proceeds from any online raffle occasion may not be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or improvement, of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subsection (a) of this section.

(e) The Tax Commissioner may disapprove any contract for sale of goods or services to any online raffle licensee for use in or with relation to any online raffle operation or occasion, or any lease of real or tangible personal property to any online raffle licensee for use in or with relation to any online raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any online raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the online raffle license or other charitable raffle license and for refusal by the Tax Commissioner to renew the online raffle license or raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of subsections (a) through (e) of this section shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service, or institution of higher education purposes other than that stated in its license application or for permission to expend its

49 net proceeds later than the one-year time period specified in this section. The application shall be  
50 on a form furnished by the commissioner and shall include the particulars of the requested  
51 changes and the reasons for the changes. The application shall be filed no later than 60 days  
52 before the end of the one-year period specified in this section. In the case of an application to  
53 extend the time in which the net proceeds are to be expended for a charitable or public service  
54 purpose or for an institution of higher education's athletics department purpose, the licensee shall  
55 file periodic reports with the commissioner as directed until the proceeds are expended.