

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED
SEP - 5 10 2 38

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WEST VIRGINIA LOTTERY TITLE NUMBER: 179

CITE AUTHORITY W. Va. Code - 29-22-5, 9(b), 10, and 17

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: State Lottery Rules and Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Robert H. Wilhelm, Deputy Director
Finance and Administration

2.4. "Certified Drawing" - A drawing about which the lottery and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

2.5. "Commission" or "State Lottery Commission" means the State Lottery Commission created by the State Lottery Act, West Virginia Code section one, article twenty-two, chapter twenty-nine et seq.

2.6. "Depository" means any person, including a bank or state agency, performing activities or services in connection with the operation of the Lottery for the deposit and handling of Lottery funds, the accounting thereof, and the safekeeping of tickets.

2.7. "Director" means the individual appointed by the Governor to provide management and administration necessary to direct the Lottery office or any other person to whom the Director's authority is lawfully delegated.

2.8. "Drawing" - The procedure determined by the Director by which the Lottery selects the winning combination in accordance with the rules of the game.

2.9. "Employee of the Agency" means a person who is an employee of the agency and the commission unless the context clearly indicates otherwise.

2.10. "Game" means any individual or particular type of lottery authorized by the agency.

2.11. "Instant Game" - A game in which a ticket is purchased and upon removal of a latex covering on the front of the ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to the lottery for payment.

2.12. "Instant Ticket" - The ticket purchased for participation in an instant game.

2.13. "Lottery Game" means the public gaming system or games established and operated by the Lottery office.

2.14. "Lottery Retailer" or "Retailer" means any person licensed by the Commission to sell and dispense instant tickets and materials or lottery games, not to include operation of electronic computer terminals in such sales and dispensing, unless otherwise authorized.

2.15. "Lottery Sales Agent" or "Sales Agent" or "On-Line Agent" means any person licensed by the Commission to sell and dispense lottery tickets, materials, and to operate electronic terminals, and lottery games in such sales and dispensing.

2.16. "Lottery Ticket" or "Tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

2.17. "On-Line Game" - A lottery game in which a player pays a fee to a lottery agent and selects a combination of digits, numbers, or symbols, type and amount of play, and drawing date, and receives a computer-generated ticket with those selections printed on it. The lottery will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played. Each ticket bearer whose valid ticket includes a winning combination shall be entitled to a prize if a claim is submitted within the specified time period.

2.18. "On-Line Ticket" - A computer-generated ticket issued by an on-line agent to a player as a receipt for the combination a player has selected. That ticket shall be the only acceptable evidence of the combination of digits, numbers, and/or symbols selected. On-line tickets may be purchased only from on-line agents.

2.19. "Person" means human being, association, corporation, club, trust, estate, society, governmental entity, company, joint stock company, receiver, trustee, assignee, referee, and anyone acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of human beings.

2.20. "Play Numbers" - The numbers or symbols appearing in the designated areas as under the removable covering on the front of the ticket.

2.21. "Prize" means any award, financial or otherwise, awarded by the Commission.

2.22. "Provisional License" means a license issued by the commission which temporarily authorizes a person to act as a Lottery retailer or Lottery sales agent pending processing of the annual license or renewal.

~~2.23. "Regional Office" means one of the offices established statewide to provide services and assistance to lottery prize winners, retailers and sales agents.~~

~~2.24.~~ 2.23. "Retail Terminal" - The electronic computer terminal through which an on-line agent enters the combination selected by a player and by which on-line tickets are generated and claims are validated.

~~2.25.~~ 2.24. "Ticket Bearer" - The person who has signed the ticket or has possession of the unsigned ticket.

~~2.26.~~ 2.25. "Ticket Number" - The preprinted number found on the back of each ticket which identifies that particular ticket as one (1) of a series of tickets.

~~2.27.~~ 2.26. "Ticket Stock Number" - The printed number or numbers appearing on the back of each ticket.

~~2.28.~~ 2.27. "Validation" - The process of determining whether an on-line ticket presented for payment is a winning ticket.

~~2.29.~~ 2.28. "Validation Number" - The multi-digit number found on the face of the ticket. There must be a validation number on each ticket.

~~2.30.~~ 2.29. "Winning Combination" - One or more digits, numbers, or symbols randomly selected by the lottery in a drawing which has been certified.

2.30. "Bonus-Incentive Plan" - For each winning ticket of \$500.00 or more cashed, the lottery sales agent or lottery retailer selling the ticket will receive a one percent (1%) bonus. The one percent (1%) bonus is limited to a maximum of \$10,000.00 per prize. Incentive plans may be developed as additional compensation for the agents and retailers. The bonuses and incentives combined may not exceed one percent (1%) of annual gross sales of agents and retailers.

179-1-3. Financial Administration

~~3.1.---Regional--Daily--Deposit--Accounts---The--Director--shall--establish--and--maintain--accounts--in--each--region--to--accept--daily--deposits--from--lottery--sales--or--on--line--agents--and--lottery--retailers.~~

~~3.1.1.---The--Director--shall--make--the--selection--of--regional--depository--banks--in--accordance--with--applicable--law.~~

~~3.1.2.---Each--account--established--under--this--section--shall--be--swept--by--electronic--funds--transfer--("wire--transfer")--to--an--account--of--the--Treasurer--of--State.~~

~~3.1.3.---The--Director--shall--issue--special--instructions--to--"Sweep"--daily--any--funds--in--Regional--Daily--Deposit--accounts--established--herein.~~

~~3.1.4.---The--Director--may--authorize--a--float--by--deposit--banks,--not--to--exceed--five--(5)--days--duration,--as--necessary,--to--permit--the--banks--and--agency--to--determine--and--adjust--any--checks--returned--because--of--insufficient--funds--or--other--irregularities--or--deficiencies--in--deposits.~~

~~3.2.---State--Lottery--Fund--Account---The--Director--shall--cause--to--be--established--a--State--Lottery--Fund--Account,--which--shall--be--an--account--of--the--State--Treasury.~~

~~3.2.1.---Such--account--shall--be--established--in--accordance--with--applicable--provisions--of--state--law,--and--any--applicable--regulations--of--the--Treasurer--of--State.~~

~~3.2.2.---In--establishing--the--State--Lottery--Fund--Account,--there--shall--be--established--the--following--sub-accounts:~~

3.2.2.1. -- Operations Sub Account -- This sub account shall constitute fifteen percent (15%) of lottery revenue, except, that in the event that the balance of this account is equal to or greater than two hundred fifty thousand dollars (\$250,000) any excess over that amount shall remit directly to the General Revenue Transfer Sub Account herein described.

3.2.2.2. -- General Revenue Transfer Sub Account -- This sub account shall constitute no less than thirty four percent (34%) of gross revenue during any year of operation in the first three (3) years; and shall constitute no less than forty percent (40%) of gross revenue in any succeeding year.

3.2.2.3. -- Lottery Prize Trust Sub Account -- This sub account shall constitute approximately forty five percent (45%) of gross revenue. -- The calculation of the forty five percent (45%) shall be made for each instant or on-line game based on the design parameters for that game set out in specific game rules and recognizing that approximately twenty four percent (24%) of this amount is automatically paid to low tier winners in the instant game prize structure.

(a) -- This sub account is subject to draw down from Lottery Prize Account and Lottery Jackpot Prize Trust Account.

(b) -- Funds remaining one hundred eighty (180) days from drawing on Grand Prize Event or one hundred eighty (180) days from game end upon which no valid claim has been made shall revert back to Lottery Prize Trust Sub Account.

3.2.2.4. -- Lottery Jackpot Prize Trust Sub Account -- This interest bearing trust account will permit accumulations of the jackpot prizes won in drawings and events and permit the disbursement by the lottery of annual payments of prizes on an annuity basis from accrued interest or, in the alternative, permit the purchase from trust funds of annuities from commercial firms for payment of prizes due to the winners.

3.3. -- State Lottery Prize Account -- The Director shall cause to be established a State Lottery Prize Account, which shall permit the immediate payment by check of winners of Lottery Prizes.

3.3.1. -- The Lottery Prize Account shall be a zero balance demand deposit account established by the Director in accordance with applicable law and regulations of the Treasurer of State, funded daily by transfers from the Lottery Prize Account in an amount equal to preceding day demands.

3.3.2. -- Access to the account for purposes of drawing checks shall be limited to those persons expressly authorized by the Director to operate secure checkwriting machines and who are provided security keys and computer keys for their operation incident to their official duties.

3.3.3. -- Checks: -- All checks issued from the Lottery Prize Account shall prominently display the logo of the West Virginia Lottery.

3.2.2.2. Operation and Administration Expenses Account

- This account shall consist of transfers made from the Revenues and Transfers Account not to exceed fifteen percent (15%) of lottery revenue. In the event that the balance of this account is equal to or greater than two hundred fifty thousand dollars (\$250,000), any excess over that amount shall be considered net profit and allocated as such.

3.2.2.3. Jackpot Prize Trust Account - This account

shall consist of jackpot prizes accumulated for the purpose of buying annuities for the payment of prizes due the winners over a period of years. Also, as the annuities mature, the funds are held in this account until payment is made to the winners.

3.3. Prize Disbursement Account - The Director shall ~~cause--to-be~~ established establish a Prize Disbursement Account, in a private banking institution, which shall permit the immediate payment of lottery prizes, by check, to the winners.

3.3.1. The total expenditures from the Prize Disbursement Account and the Jackpot Prize Trust Account combined with any prizes paid by the sales agents and retailers, must be a minimum annual average of forty-five percent (45%) of ~~lottery--revenue~~ gross amount received.

3.3.2. The Prize Disbursement Account shall be a zero balance demand deposit account established by the Director in accordance with applicable law and regulations of the State Treasurer ~~of State~~, funded daily by transfers from the Revenue and Transfers Account in an amount equal to the preceding day's demand.

3.3.3. Access to the account for purposes of drawing checks shall be limited to those persons expressly authorized by the Director to operate secure checkwriting machines and who are provided security keys and computer keys for their operation incident to their official duties.

3.3.4. All checks issued from the Prize Disbursement Account shall prominently display the logo of the West Virginia Lottery.

3.3.5. Checks in payment of prizes drawn upon the Prize Disbursement Account may be issued under the signature of the Director or the authorized facsimile thereof.

3.3.6. The Director may also cause checks to be issued from the Prize Disbursement Account to lottery sales agents and lottery retailers to fulfill obligations of a bonus-incentive plan.

3.3.7. The agency shall settle retailer and agent accounts no less frequently than weekly, unless the Director specifies a different time.

3.3.8. The Director may make payments from Prize Disbursement Account to sales agents and retailers for purposes of refund or credit for unsold tickets, other ticket sales adjustments or instant game account adjustments.

3.3.4.---Checks-in-payment-of-prizes-drawn-upon-the-Lottery Prize-Account-may-be-issued-under-the-signature-of-the-Director-or-the authorized-facsimile-thereof.

3.3.5.---No-check--from-a-regional-office-shall-be-issued-for an-amount-greater-than-five-thousand-dollars-(\$5,000);--each-check-form issued-from--a-regional--office-shall--bear-the-legend:--"Not-Valid-For Amounts-Greater-Than-Five-Thousand-Dollars-(\$5,000)".

3.3.6.---The-Director-may-also-cause-checks-to-be--issued-from the-Lottery-Prize-Account-to-Lottery-sales-agents-and-Lottery-retailers to-fulfill-obligations-of-a-bonus-incentive-plan.

3.3.7.---The-agency-shall-settle--accounts-no--less-frequently than-weekly,--or-upon--terms-which--the-Director--and-the-State-Auditor shall-agree-in-writing.

3.3.8.---The-Director--may--make--payments--from--Lottery-Fund Account-to--sales-agents-and-retailers-for-purposes-of-refund-or-credit for-unsold-tickets,--other--ticket--sales--adjustments--or--instant-game account-adjustments.

3.1. Collection of Accounts - Agents/retailers will establish private banking accounts in which to deposit payments for the purchase of instant tickets or receipts from on-line sales.

3.1.1. The funds in each of the accounts established under this section shall be swept by electronic funds transfer ("wire transfers") to an account of the State Treasurer of State (see below- Revenues and Transfers Account).

3.1.2. The Director may authorize other methods of collection such as cash on delivery or intra-governmental transfers in the case of ABCC stores.

3.2. State Lottery Fund - The Director shall establish a State Lottery Fund which shall consist of a group of accounts within the State Treasury.

3.2.1. Such accounts shall be established in accordance with applicable provisions of state law, and any applicable regulations of the State Treasurer of State.

3.2.2. In establishing the State Lottery Fund, there shall be established the following accounts:

3.2.2.1. Revenues and Transfers Account - This account shall consist of all revenue received from the sale of lottery tickets. Transfers will be made from this account for prizes, net profit, and operation and administration expenses, in amounts and for the purposes established by lottery legislation. Net profits are transferred to the accounts to which the Legislature has appropriated them. If net profits for any particular year exceed the amount appropriated by the Legislature, the excess funds will be held in this account until such time as they are appropriated. The funds in this account are invested in the State Consolidated Fund until the point of transfer and are interest bearing.

179-1-4. Licensing

4.1. The commission shall license as Lottery sales agents and as retailers those persons who will, in the judgement of the Commission, meet the statutory requirements for licensing, promote the sale of lottery tickets and materials, promote the best interest of the Lottery and of the State, and achieve the goals of the statute.

4.1.1. Any person interested in obtaining a license as a Lottery retailer or Lottery sales or on-line agent must first file an application with the Director on a form supplied for that purpose by the Director. The application form shall be designed to solicit sufficient relevant information from an applicant to permit the Director to make the determination required by the Lottery Act and these rules for issuance of a license by the Commission.

4.1.2. License of a sales or on-line agent or lottery retailer in any capacity is a privilege personal to that person and is not a legal right. Such license is revocable by the Director or by a sales or on-line agent or lottery retailer by surrender of the license to the Director.

4.2. Eligibility for licensing.

Any person may submit an application for licensing as a lottery agent or retailer, except:

4.2.1. No person may submit an application who will engage in business solely as a lottery sales or on-line agent or lottery retailer.

4.2.2. No person under the age of twenty-one (21) may submit an application for licensing as a lottery sales agent or lottery retailer.

4.2.3. No person may submit an application who is a member of the Commission or an employee of the agency, or who is the spouse, child, brother, sister or parent, by blood or marriage, residing as a member of the same household or in the principal place of abode of a member of the Commission or employee of the agency.

4.2.4. No person may submit an application who is a vendor of Lottery tickets or material or data processing services, or, which is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

4.2.5. No foreign corporation may submit an application unless it is currently registered to do business within the State of West Virginia.

4.3. Disqualification, grounds of refusal of a license. The Commission shall refuse to grant a license to any applicant who has been convicted of any violation of W. Va. Code 29-22-1, et. seq. or of any felony or any crime related to theft or gambling or involving moral turpitude; or any person who is subject to an exception to subsection 4.2. of these rules.

4.3.1. Issuance of licenses. Upon receipt, review and investigation of applications and applicant background, the Commission may issue annual licenses for sales of lottery tickets in accordance with these rules. The Commission shall license only such persons or entities which, in its opinion, will best serve the public interest and public trust in the Lottery and promote the sales of lottery tickets. Prior to issuing any license, the Commission shall consider the following factors:

4.3.1.1. The moral character and reputation of the applicant.

4.3.1.2. The financial responsibility and security of the applicant and his business or activity.

4.3.1.3. The accessibility of the public to the licensed premises proposed by applicant.

4.3.1.4. The number and sufficiency of existing licenses to serve the public interest.

4.3.1.5. The volume of applicant's expected lottery ticket sales.

4.3.1.6. The security and efficient operation of the lottery.

4.3.1.7. Whether the applicant is ineligible under any provisions of the Lottery Act.

4.3.1.8. Whether the applicant has received or will hold, either as principal, entity, subsidiary agent, or subcontractor more than twenty-five percent (25%) of licenses to act as lottery sales agent in any one (1) county or municipality, or more than five percent (5%) of such licenses issued statewide, unless eligible for consideration for an exception under the Act.

4.3.1.9. Whether the applicant has provided false or misleading information or has misrepresented information regarding qualifications or fitness for licensure.

4.3.1.10. Whether the applicant is a West Virginia corporation or is currently licensed to do business within the State of West Virginia.

4.4. Revocation; grounds for removal or suspension of license or non-renewal of license.

4.4.1. The Commission may, for any reason ~~outlined~~ outlined in Section 4 of these rules, or its subsections, or for other cause shown revoke, suspend, or decline to renew a license of a lottery sales agent or lottery retailer.

4.4.2. If at any time after issuance of a license, it is determined by the Director that a sales or on-line agent or lottery retailer would no longer meet the standards for the issuance of a license provided in these rules, he may immediately suspend such license, which suspension shall remain in effect until the reason for suspension has abated, or he may ask the Commission to revoke such license.

4.4.3. If the sales or on-line agent or lottery retailer fails to observe and comply with the procedures and the rules of the Commission or with the provisions of the Lottery Act, or orders or instructions of the Director, the Commission may suspend or revoke the license of such person.

4.4.4. Additional grounds for suspension or revocation of license.

4.4.4.1. Non-compliance with Lottery Act, Rules or Regulations. The Director may suspend or recommend to the Commission that it revoke the license of a sales or on-line agent or lottery retailer who does not comply with the Lottery Act and all rules, conditions, regulations, standards and other adopted, promulgated or issued thereunder the Commission or the Director.

4.4.4.2. Violation of prohibitions. The Commission may suspend or revoke the license of any sales or on-line agent or lottery retailer who violates one of the prohibitions set out below.

4.4.4.2.1. A sales or on-line agent or lottery retailer shall not sell a ticket a price greater than or less than that stated by the Commission. No ticket may be sold on a credit basis by an agent or retailer.

4.4.4.2.2. A sales or on-line agent or lottery retailer shall not sell a ticket at a location or premises different than that shown on the license certificate.

4.4.4.2.3. A sales or on-line agent or lottery retailer shall not permit any other person to sell tickets consigned to him; provided that a sales or on-line agent or lottery retailer may sell tickets through his employees.

4.4.4.2.4. No sales or on-line agent or lottery retailer shall sell a ticket to any person under eighteen (18) years of age.

4.4.4.2.5. No sales or on-line agent or lottery retailer, directly or indirectly, on behalf of himself, or another, nor any organization, shall invite, solicit, demand, or offer or accept any payment, contribution, favor, or other consideration to influence the award, renewal or retention of a license.

4.4.4.2.6. A ticket shall not be purchased with food stamps or coupons and the sales or on-line agent or lottery retailer shall not accept as consideration for a ticket food stamps or coupons.

4.4.4.3. Grounds relating to the honest and efficient conduct of the Lottery. The Director may suspend or recommend to the Commission to revoke a sales or on-line agent's or lottery retailer's license for any of the following:

4.4.4.3.1. The sales or on-line agent or lottery retailer has made a fraudulent misrepresentation in connection with his application for a license, in any of his reports, or to any person in connection with a lottery transaction;

4.4.4.3.2. The sales or on-line agent or lottery retailer has failed to maintain the sales levels set for him by the Director-;

4.4.4.3.3. The sales or on-line agent or lottery retailer has begun to engage in the sale of lottery tickets as his sole business, occupation or activity-;

4.4.4.3.4. The sales or on-line agent or lottery retailer has failed to take adequate security precautions for the safe handling of tickets, lottery materials or ticket sales proceeds due from the sales or on-line agent's or lottery retailer's ticket sales-;

4.4.4.3.5. The sales or on-line agent or lottery retailer has failed to regularly promptly and accurately settle the accounts of his lottery transactions and pay the amounts due from the sales or on-line agent's or lottery retailer's ticket sales-;

4.4.4.3.6. The sales or on-line agent or lottery retailer has failed to notify of any change in ownership-;

4.4.4.3.7. The sales or on-line agent or lottery retailer has failed to open his books or records for reasonable inspection by the Lottery Commission or Director-;

4.4.4.3.8. The sales or on-line agent or lottery retailer has failed to display his license or required advertising and display material; and

4.4.4.3.9. The sales or on-line agent or lottery retailer has failed to make a report of a violation of these rules or a conviction of any felony or crime related to theft or gambling or involving moral turpitude. At any time during the term of this Agreement, if a lottery retailer ~~or a lottery retailer's employee~~ or a lottery sales or on-line agent ~~or sales or on-line agent's employee~~ is convicted of a felony or a gambling related offense, the lottery retailer or sales or on-line agent or licensee shall within fourteen (14) days, notify the Director, in writing, of the conviction and the offense. For purposes of this section, a sales or on-line "agent" or lottery "retailer" includes any natural person or in the case of other persons, as defined in 2.14 and 2.15 ~~infra~~ any person who holds ownership or a controlling interest in such an entity.

4.5. Transfers of licenses; licensed premises.

4.5.1. Licenses nontransferrable. Each license will authorize a specified person to sell tickets at a specified location. No license may be transferred to another person. If the control of a sales or on-line agent or lottery retailer changes hands, the sales or on-line agent or lottery retailer may not sell any more tickets until he has submitted a new license application and the Director has issued a new license.

4.5.2. Change of sales or on-line agent or lottery retailer location. If a sales or on-line agent or lottery retailer changes the location of his place of business, he shall not sell tickets at the new location until the Director has authorized the transfer of sales or on-line agent's or lottery retailer's license to the sales or on-line agent's or lottery retailer's new location after he has considered all information concerning the sales or on-line agent's or lottery retailer's new location in the manner which would be required were the sales or on-line agent or lottery retailer making an initial application for a license at that location.

4.6. License term and renewal, fees.

4.6.1. Provisional licenses. Pending a final resolution of any question arising in respect of a licensing decision, the Director may issue a license subject to such terms and conditions as he may deem appropriate. Any provisional license shall expire on the expiration date shown on its face which in any case shall not be more than one (1) year from the date such license is issued.

4.6.2. Annual license. Every holder of a license other than a provisional license shall renew such license annually at least ten (10) days before the anniversary date of the initial granting of the license.

4.6.3. Temporary license. For specific events and activities or under special conditions and for limited duration the Director may issue to organizations or other persons a temporary license for the duration of the event or conditions with such special terms as the Director may deem desirable.

4.6.4. License fees.

4.6.4.1. Upon initial application for licensing as a Lottery retailer, the applicant shall pay to the Commission a non-transferrable non-refundable license fee of twenty-five dollars (\$25.00).

4.6.4.2. Upon initial application for ~~licensing as a lottery-sales-agent~~, installation of an on-line terminal, the applicant shall submit a fee of five hundred dollars (\$500.00), refundable only under certain terms to be set out in the Lottery contract for on-line sales agents.

4.6.4.3. Upon application for renewal of licensing as a lottery retailer or sales or on-line agent, and for all licenses expiring ~~January 1, 1987 or later~~ June 30 of each year, the lottery retailer shall submit an annual fee of twenty-five dollars (\$25.00); ~~and the lottery sales or on-line agents, an annual fee of five hundred dollars (\$500.00).~~

4.6.4.4. After the initial year of operation as an on-line sales agent, the agent will be charged a weekly service fee of \$5.00.

4.6.4.5. Effective June 1, 1988, in the event that a business changes ownership and an on-line terminal is in place and operating and the new owner(s) meet all other requirements for licensing as a lottery retailer, there will be no initial installation fee and the agent will be charged a weekly service fee of \$5.00 effective from the first day of operation.

4.7. Bonds

4.7.1. Each lottery sales agent shall ~~obtain for each licensed terminal on premises a~~ participate in the Financial Guarantee Bond program provided by the lottery in the minimum amount of ~~ten thousand dollars (\$10,000)~~ five thousand dollars (\$5,000) for each terminal on the premises. ~~or for an additional amount in excess of ten thousand dollars (\$10,000) to be determined by the Director, based upon volume of sales by the agent.~~ Such bond shall be obtained renewed on an annual continuing basis, ~~and surety shall furnish a letter or certificate of continuation each renewal year, immediately upon renewal or continuation.~~ ~~Required bond for years following the first year of licensing will be based upon the average sales by the licensed terminal.~~ Payment for bonding shall be made by Electronic Funds Transfer from sales agents' bank accounts to the lottery's bank Revenues and Transfers Account in October of each year.

4.7.2. The Director shall require a bond in an amount to be determined adequate to safeguard the State's interest in tickets to be sold by a licensed lottery retailer, if in his discretion such bond appears likely to be needed to secure such interest.

4.8. Contract

4.8.1. The Director shall enter into a contract with each lottery retailer and lottery sales agent. Such contract will set out the duties, responsibilities, and obligations obtaining pertaining to the parties thereto, such contract to continue in effect during the period which the retailer or agent complies with applicable statutes, rules and regulations, fee requirement, and any other duties or requirements under the terms of the contract.

179-1-5. Games

The Commission authorizes the implementation of instant lottery games and on-line games which meet the criteria generally set forth herein.

5.1. The Director is hereby authorized to select, operate and contract to and for the operation of instant games which meet the criteria generally set forth herein.

5.2.1. Instant game criteria - The price of an instant game ticket shall not be less than one dollar (\$1.00) and not more than five dollars (\$5.00) except by special promotions authorized by the Director.

5.2.2. Winners of an instant game are determined by the matching or specified alignment of the play numbers, digits and symbols on the tickets. The ticket bearer must notify the lottery of the win and submit the winning ticket to the lottery as specified by the Director. The winning ticket must be validated by the lottery through the use of the validation number and any other means as specified by the Director.

5.2.3. The instant game shall be designed to pay out prizes in amounts on a numerical frequency to be determined by the Director.

5.2.4. The duration of ticket sales for an instant game shall be determined by the Director. The start date and closing date of the instant game shall be publicly announced.

5.2.5. The frequency of drawing and method of selection of a winner in any instant game shall be determined by the Director in specific game rules.

5.2.6. At the Director's discretion, an instant game may include a grand prize drawing or drawings. The general criteria for the grand prize drawing shall be as follows:

(a) Finalists for a grand prize drawing shall be selected in an elimination drawing(s) from redeemed tickets or in a manner meeting the criteria stated in specified game rules as determined by the Director. Participation in the elimination drawing(s) shall be limited to such tickets which are actually received and validated by the Director on or before a date to be announced by the Director. The Director may reserve the right to place any semi-finalist whose entry was not entered in the elimination drawing(s) and who is subsequently determined to have been entitled to such entry into elimination drawing of a subsequent instant game, and the determination of the Director shall be final.

(b) The number of prizes and the amount of each prize in the grand prize drawings(s) shall be determined by the Director to correspond with the size and length of the instant game and to comply with 5.2.5. above.

(c) The dates and times as well as the procedures for conducting the elimination drawing and grand prize drawing shall be determined by the Director.

5.2.7. Procedures for claiming instant prizes are as follows:

(a) To claim an instant game prize of twenty-five dollars (\$25.00) or less, the claimant shall present the winning ticket to the lottery retailer or sales or on-line agent from whom the ticket was purchased or mail the signed ticket to the Director. The lottery retailer or sales or on-line agent shall verify the claim and, if applicable, make payment of the amount due the claimant. In the event the lottery retailer or sales or on-line agent cannot verify the claim, the claimant shall fill out a claim form, as provided by the Director, which shall be obtained from any lottery retailer or sales or on-line agent and present or mail the completed form, together with the disputed ticket to the Director. If the claim is validated by the Director, a check shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be promptly notified.

(b) To claim an instant prize of more than twenty-five dollars (\$25.00) and up to six hundred dollars (\$600) the claimant shall complete a claim form, as provided by the Director, which is obtained from any lottery retailer or sales or on-line agent or the Director and ~~mail or~~ present the completed form together with the winning ticket to a participating lottery retailer or to an on-line agent, the Director. To claim an instant prize over six hundred dollars (\$600), the claimant shall complete a claim form and mail or present the form together with the winning ticket to the Director. Upon validation by the Director, a check shall be forwarded to the claimant in payment of the amount due, less any applicable federal income tax withholding. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be notified within five (5) days of the determination.

(c) Any ticket not passing all the validation checks specified by the Director is invalid and ineligible for any prize and shall not be paid. However, the Director may, solely at his option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the Director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

5.3. Confidentiality of tickets. No sales or on-line agent or lottery retailer or its employees or agents shall attempt to ascertain the numbers or symbols appearing in the designated areas under the removable latex coverings or otherwise attempt to identify winning tickets by any means.

5.4. Notification to commission. The Director shall provide commission members with copies of specific game rules. The Chairman or a quorum of the Commission may ask for review of the instant game rules at the next scheduled meeting of the Commission following receipt of draft rules, and shall adopt or refer rules to lottery staff for revision at that meeting.

5.5.1. Official end of game. The Director shall announce the official end of each instant game. A player may submit a low-tier winning ticket to the licensed agent from whom the ticket was purchased or the lottery and a high-tier winning ticket to the lottery for prize payment up to one hundred eighty (180) days after the official end of game. In order to participate in a Grand Prize Drawing a player must redeem a ticket which qualifies for entry into that Grand Prize Drawing within the time limits set forth by the Director governing the conduct of that specific game.

5.5.2. A lottery retailer or sales or on-line agent may continue to sell tickets for each instant game after the official end of that game up to ~~thirty (30)~~ one hundred eighty (180) days thereafter.

5.5.3. A sales or on-line agent or lottery retailer must return to the Lottery full ~~or partial~~ packs of unsold lottery tickets for each game within thirty (30) days of the official end of that game in order to receive credit from the lottery as provided for in the lottery sales or on-line agent or lottery retailer contract. The lottery has no obligation to grant credit for tickets returned more than thirty (30) days after the official end of that game.

5.6.1. Ticket validation requirements. To be a valid West Virginia Lottery instant game ticket, a ticket must meet all of the following validation requirements.

(a) The ticket must have been issued by the Director in an authorized manner.

(b) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner.

(c) The ticket must not be counterfeit in whole or in part.

(d) The ticket must not be stolen nor appear in any list of omitted tickets on file with the lottery.

(e) The ticket must be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

(f) The ticket must have exactly one (1) play symbol and exactly one (1) caption under each of the rub-off spots, exactly one (1) pack-ticket number, exactly one (1) agent verification code, and exactly one (1) validation number. They must be present in their entirety, legible, right-side up, and not reversed in any manner.

(g) The validation number of an apparent winning ticket shall appear on the lottery's official list of validation numbers of winning tickets; and a ticket with that validation number shall not have been previously paid.

(h) The ticket must pass all additional confidential validation requirements established by the Director.

5.6.2. Any ticket not passing all the validation requirements in subsection 1 of this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

5.6.3. The Director may replace any invalid ticket with an unplayed ticket of equivalent sales price from any current instant game. In the event a defective ticket is purchased, the only responsibility or liability of the lottery shall be the replacement of the defective ticket game, or issue a refund of the sales price. However, if the ticket is partially mutilated or if the ticket is not intact but it still can be validated by other validation tests, the Director may pay the prize for that ticket in his discretion.

5.7. On-line games authorized-director's authority. The Director is authorized to select and operate on-line games which meet the criteria generally set forth herein.

5.8.1 On-line games criteria. The base price of an on-line ticket shall not be less than fifty cents (.50).

5.8.2. The manner and frequency of drawings may vary with the type of on-line games.

5.8.3. The times, locations, and drawing procedures shall be determined by the Director.

5.8.4. A ticket bearer entitled to a prize shall submit the winning ticket as specified by the Director. The winning ticket must be validated by the lottery or an on-line agent through use of the validation number and any other means as specified by the Director.

5.8.5. Procedures for claiming on-line prizes are as follows:

5.8.5.1. To claim an on-line game prize of six hundred dollars (\$600.00) or less within ~~thirty-(30)~~ one hundred eighty (180) days of the drawing the claimant shall present the winning on-line ticket to any Lottery sales agent or to the lottery.

(a) If the claim is presented to a lottery sales agent, the agent shall validate the claim and, if determined to be a winning ticket, make payment of the amount due the claimant. If the lottery sales agent cannot validate the claim, the claimant may obtain and complete a claim ~~for~~ form and submit it with the disputed ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

(b) If the claim is presented to the lottery, the claimant shall complete a claim form, as provided by the Director, and submit it with the winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due, less any Federal Income Tax required to be withheld under the Internal Revenue Code. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

5.8.5.2. To claim ~~on an~~ on-line prize of more than six hundred dollars (\$600), ~~or any prize more than thirty (30) days~~ within one hundred eighty (180) days after the date of the drawing, the claimant shall obtain and complete a claim form, as provided by the Director, and submit it with the winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due, less Federal Income Tax required to be withheld under the Internal Revenue Code. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

5.9.1. Drawing and end of sales prior to drawings. Drawings shall be conducted in a location and at days and times designated by the Director. ~~Each on-line drawing script will contain the statement: "Digits/Numbers/Sym drawn are not official until validated and drawing is certified."~~

5.9.2. The Director shall announce for each type of on-line game the time for the end of sales prior to the drawings. Agents and retail terminals will not process orders for on-line tickets for that drawing after the time established by the Director.

5.9.3. The Director shall designate the type of equipment to be used, shall establish procedures to randomly select the winning combinations for each type of on-line game, and shall require the presence of an independent accountant to witness all pre- and post-drawing tests, and the drawing or winner selection.

5.9.4. The equipment used to determine the winning combination shall not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment shall be tested prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be certified until all validation checks are completed. No prizes shall be paid until after the drawing is certified.

5.9.5. All on-line drawings shall be broadcast live on television provided the facilities for such broadcasts are available and operational.

5.9.6. The Director shall establish procedures governing the conduct of drawings for each type of on-line game. The procedures shall include provisions for deviations which include but are not limited to: (a) drawing equipment malfunction before validation of winning combination+; (b) video and/or audio malfunction during the drawing+; (c) fouled drawing; (d) delayed drawing; and (e) other equipment, facility and/or personnel difficulties.

5.9.7. In the event a deviation occurs, the drawing will be completed under lottery supervision. The drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination will be provided to the media for dissemination to the public.

5.9.8. If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits, or symbols, a "Foul" shall be called by the Lottery Drawing Official. Any digit/number/symbol drawn prior to a "Foul" being called will stand and be deemed official after passing lottery validation tests.

5.9.9. The Director shall delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has ~~occurred~~ occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing will be conducted to determine the actual winner.

5.10.1. Validation requirements. To be a valid winning on-line ticket, all of the following conditions must be met:

(a) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket. The ticket shall not be valid unless the ticket number and other information is recorded in the Lottery computer and transaction master file.

(b) The ticket shall be intact.

(c) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner.

(d) The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

(e) The ticket must have been issued by an authorized licensed agent in an authorized manner.

(f) The ticket must not have been stolen or cancelled.

(g) The ticket must not have been previously paid.

(h) The ticket shall pass all other confidential security checks of the lottery.

5.10.2. Any ticket failing any validation requirements listed in the preceding section is invalid and ineligible for a prize subject to the condition of 5.10.3. and 5.10.4. ~~infra~~

5.10.3. The Director may replace an invalid on-line ticket with an on-line ticket for a future drawing of the same game. The Director may pay the prize for a ticket that is partially mutilated or is not intact if the on-line ticket can still be validated by the other validation requirements, at his discretion.

5.10.4. In the event a defective on-line ticket is purchased, the only responsibility or liability of the lottery or the Lottery sales agent shall be the replacement of the defective on-line ticket with another on-line ticket for a future drawing of the same game.

5.11.1. Payment of prizes by on-line agents. An on-line agent shall pay to the ticket bearer ~~on-line-games prizes~~ prizes of six hundred dollars (\$600) or less for any validated claims presented within ~~thirty (30)~~ one hundred eighty (180) days of the drawing to that Lottery sales agent. These prizes shall be paid during all normal business hours of that agent, provided, the on-line system is operational and claims can be validated.

5.11.2. ~~An~~ A sales or on-line agent may pay prizes in cash or by business check, certified check, or money order or a combination thereof. A sales or on-line agent that pays a prize with a check which is dishonored may be subject to suspension or revocation of its license.

5.12. Payment of prizes - general provision.

5.12.1. Each lottery retailer or sales or on-line agent shall pay all prizes authorized to be paid by the lottery retailer or sales or on-line agent by these rules during its normal business hours at the location designated on its license.

5.12.2. A claim shall be entered in the name of a single person or legal entity. A claim may be entered in the name of an organization only ~~if~~ if the organization is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, organizations, clubs or other organizations which are not a legal entity, or do not possess a federal employer's identification number, shall designate one individual in whose name the claim is to be entered.

5.12.3. Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and complete and sign a claim form provided by the Director. The claimant shall submit the claim form and claimant's ticket to the lottery in accordance with the instructions as stated on the claim form and on the back of the ticket. In the event of a difference or conflict in the name appearing on the ticket and the claim form, the name which appears on the ticket shall control. The claimant, by submitting the claim, agrees to the following provisions:

5.12.3.1. The discharge of the State, the Lottery Commissioners, its officials, officers and employees of all further liability upon payment of the prize: and

5.12.3.2. The authorization to use the claimant's name and photographs for publicity purposes upon award of the prize.

5.12.4. A prize must be claimed within the time limits prescribed by the commission in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later ~~that~~ than one hundred eighty (180) days after the official end of that instant game or the on-line drawing for which that on-line ticket was purchased.

5.12.5. The Director or Commission may deny awarding a prize to a claimant if the ticket is stolen, unissued, mutilated, altered, unreadable, counterfeit in whole or in part, miscut, misregistered, defective, printed or produced in error, multiply printed, or blank or partially blank.

5.12.6. No person entitled to a prize may assign the right to claim it, except:

5.12.6.1. That payment of a prize may be made to any court-appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court-appointed assignees: or

5.12.6.2. For the purpose of paying federal, state or local tax; or to satisfy executions, judgements, or orders or other processes legitimately obtained from federal or state courts.

5.12.7. In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the Commission or Director may refrain from making payment of the prize pending a final determination by the Commission or by a court or competent jurisdiction relative to the same.

5.12.8. A ticket that has been legally issued by a licensed retailer is a bearer instrument until signed. The person who signs the ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the State, its officials, officers, and employee and of the agency, commission, and employees of the agency terminates upon payment.

5.12.9. All prizes shall be paid within a reasonable time after the claims are verified by the Director and a winner is determined. The date of the first installment payment of each prize to be paid in installment payments shall be the date the prize event is validated and certified. Subsequent installment payments shall be made annually from the date of the event in accordance with the type of prize awarded.

5.12.10. The Director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments shall be brought up to date immediately upon the Director's confirmation and continue to be paid on each originally scheduled payment date thereafter. If any prize is payable for the life of the claimant, only an individual may claim such prize, and if claiming on behalf of a group, a corporation, or the like, the life of the claim shall not exceed twenty (20) years.

5.12.11. The Director's decisions and judgements in respect to the determination of a winning ticket or any dispute arising from the payment or awarding ~~of~~ of prizes shall be final and binding upon all participants in the lottery.

5.12.12. In the event a dispute between the Director and claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the Director may, solely at the Director's opinion, replace the disputed ticket with an unplayed ticket or tickets of equivalent sales price from that game. This shall be the sole and exclusive remedy of the claimant.

5.12.13. All prizes or portions thereof which remain unpaid at the time of a prize winner's death shall be payable to prize winner's estate.

5.12.14. The Director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or any other evidence of a person entitled to the payment of any prize winnings then due.

5.12.15. The payment to the estate of deceased owner of any prize winnings by the Director shall absolve the Commission, Director and employees of the agency of any further liability for payment of said prize winnings. The Director need not look to pay the prize winnings beyond the estate or appointed representative.

5.12.16. The Commission or Director may petition any court of competent jurisdiction to request a determination of the payee for payment of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of, but limited to, minority, mental deficiency, or physical or mental incapacity.

179-1-6. Miscellaneous Rules

6.1. Licensing of trademark. The Commission has determined to permit the use, display, and promotion of the Lottery Logo, trademark, and other advertising materials without charge to the user or compensation to the Commission for its use.

6.1.1. Any use of the Lottery Logo or other trademarked or copyright materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and execution of the Lottery's License Agreement.

6.1.2. Any request for Licensing shall be made by submitting a form provided by the Director. Such form shall require information of sufficient quantity and detail to allow the determination of suitability for licensing of the applicant by the Director.

6.1.3. Any request for authorization properly submitted shall include a representative sample or samples of the materials for which authority is sought.

6.1.4. After review of the request and representative sample, the Director may issue a tentative authorization to proceed with production of proofs or samples of the merchandise.

6.1.5. The applicant may be required to submit the final proofs or samples representative of actual production items to the Director or his final approval before proceeding to produce such items for sale or distribution.

6.1.6. Upon receipt of notice of final approval, or upon execution of the license agreement by both parties, if no final approval is required, the licensee may initiate production of goods or materials over the specified duration of the Licensing agreement as set forth herein.

6.1.7. The Director may, over the period of the License agreement, exercise supervision over the quality of the materials produced under license, and may require as a condition to continuation of the license, changes in quality of the goods or material produced.

6.1.8. The Director and Commission may at any time terminate an agreement to license in the event that the licensee fails to meet the requirement of the agreement, or in the event that the continuation of the license is not considered to be in the best interest of the Lottery or of the State of West Virginia.



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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF THE CLERK OF THE WEST VIRGINIA
LEGISLATURE

Senator Lloyd Jackson, Co-Chairman
Delegate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

August 21, 1990

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Robert H. Wilhelm
Deputy Director
Finance and Administration
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: State Lottery Rules and Regulations

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Esther Cochran, Exec. Sec.
Ed Rebrook, Esquire