

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Lottery Commission TITLE NUMBER: 179

RULE TYPE: Legislative; CITE AUTHORITY §29-22-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

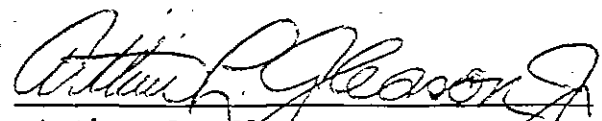
TITLE OF RULE BEING PROPOSED: Video Lottery Games

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 12, 1993 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Director
West Virginia Lottery Commission
P.O. Box 2067
Charleston, WV 25327

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Arthur L. Gleason, Jr.
Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

9.20



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STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

GASTON CAPERTON
GOVERNOR

Charleston, West Virginia

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

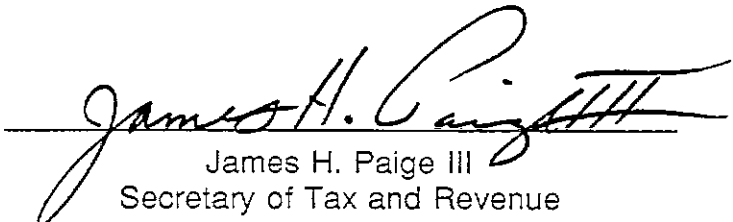
July 13, 1993

To Whom It May Concern:

Title of Rule: Video Lottery Games
Title Number: 179
Series Number: 3

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this thirteenth day of July, 1993.


James H. Paige III
Secretary of Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Video Lottery Games
 Type of Rule: Legislative Interpretive Procedural
 Agency West Virginia Lottery Commission
 Address 312 MacCorkle Avenue, S.E.
Charleston, WV 25314

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 250,000	\$ -0-	\$ 250,000	\$ 150,000	\$ 150,000
PERSONAL SERVICES	110,000	-0-	110,000	110,000	110,000
CURRENT EXPENSE	40,000	-0-	40,000	40,000	40,000
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	100,000	-0-	100,000	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

Personnel: 1 Computer Operator; 2 Security Persons; 1 Accountant
 Expense: Travel related expenses; software
 Equipment: Central computer to control terminals at race tracks.

3. Objectives of these rules:

To permit operation of video lottery type games at the State's four pari-mutuel race tracks.

Rule Title: Video Lottery Games

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

This rule is designed to provide revenue source for pari-mutuel tracks, all of which are significant employers.

C. Economic Impact on Citizens/Public at Large.

Most patrons of West Virginia's four tracks are residents of other states. Most employees of the tracks are West Virginia citizens. State revenues will also be enhanced by \$3 to \$5 million.

Date: July 13, 1993

Signature of Agency Head or Authorized Representative



Arthur L. Gleason, Jr.
Director, WV Lottery

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE REGULATION

TITLE 179

SERIES 3

BRIEF SUMMARY OF PROPOSED RULE

The West Virginia State Lottery Commission has voted to allow video lottery terminal games at race track facilities also licensed by the West Virginia Racing Commission as pari mutuel race tracks. The rule establishes licensing requirements for race track video lottery licenses as well as permits for terminal equipment manufacturers, security personnel and service technicians. This rule contemplates that terminals will be purchased or leased by each licensee race track. The net income after prizes is divided between the licensee and the Lottery Commission on a 60%-40% basis. This rule also contains due process procedural rules contemplated by W.Va. Code §§29A-5-1 et seq.

This is NOT an emergency rule.

WEST VIRGINIA LEGISLATIVE REGULATIONS

WEST VIRGINIA LOTTERY

TITLE 179

SERIES 3

1993

VIDEO LOTTERY GAMES

Filed: _____

§ 179-3-1. General.

1.1 Scope. - These regulations govern the establishment and maintenance of video lottery games in West Virginia.

1.2 Authority. - W. Va. Code §§ 29-22-5 and 29A-3-1 et seq.

1.3 Filing Date. -

1.4 Effective Date. -

§ 179-3-2. Definitions. - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 "Applicant" means any person applying for any video lottery license or permit.

2.2 "Background investigation" means a security and credit investigation of a person who has applied for a video lottery license or permit, or who is so granted a license or permit, in the capacity of a manufacturer, retailer, service technician, or validation manager.

2.3 "Commission" or "State Lottery Commission" means the West Virginia Lottery Commission created by W. Va. Code article 29-22, or its delegates.

2.4 "Control" means the authority to direct the management and policies of an applicant or licensee.

2.5 "Costs" means reimbursable Commission expenses which are charged to and collected from applicants or licensees for the expenses incurred by the Commission in the testing and examination of video lottery terminals, conducting background investigations

and the accomplishment of other relevant activities.

2.6 "Disable" or "Terminal Disable" means the process of executing a "shutdown" command from the central system which causes some or all video lottery terminals to cease functioning.

2.7 "Display" means the visual presentation of video lottery game features as shown on the screen of a video lottery terminal.

2.8 "License", or "video lottery license", or "licensed race track" means authorization granted by the Commission to a person, association or corporation which is first granted a license by the West Virginia Racing Commission to conduct thoroughbred or greyhound racing meetings pursuant to West Virginia Code §19-23-1 permitting the applicant to offer its racing customers the ability to make video lottery wagers on video lottery terminals authorized by the Lottery Commission and electronically connected to the Lottery Commission's controlling computer in defined video lottery activities.

2.9 "Lottery" means the public gaming systems or games established and operated by the State Lottery Commission.

2.10 "Net terminal income" means for each video lottery terminal the total amount of credits played less the total amount of credits won.

2.11 "Manufacturer" means any person holding a permit granted by the Commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals (VLTs), the internal computer or the random selection generator thereof, or the cabinet in which the same is housed, and whose product as intended for sale, lease or other assignment to a video lottery licensee [pari mutuel track] licensed by the Commission.

2.12 "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensee. "Own" shall also mean the exclusive constitutional and statutory control of lotteries and lottery-style wagering within the borders of the State of West Virginia by and through the West Virginia Lottery Commission authorized by Article 6, Section 36 of the West Virginia Constitution and established by §29-22-4 of the West Virginia Code.

2.13 "Permit" means authorization granted by the Commission to a person, association, or corporation to function as either a manufacturer, service technician, or validation manager.

2.14 "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

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2.15 "Player" means a person who plays a video lottery game on a video lottery terminal at a pari mutuel racing facility licensed by the Commission to conduct video lottery wagering.

2.16 "Service technician" means a person who holds a permit issued by the Commission and who performs service, maintenance, and repair on licensed video lottery terminals in the State.

2.17 "Video lottery game" means a Commission approved, owned and controlled electronically simulated game of chance that is displayed and played on licensed video lottery terminal.

2.18 "Validation Manager" means a person employed by a licensed race track who holds a permit issued by the Commission and who performs ticket redemption services.

2.19 "Video lottery terminal" or "VLT" means a Commission approved machine or device, which is compatible with the Commission's computer system, and which is used for the purpose of playing Commission licensed video lottery games.

2.20 "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

§ 179-3-3. License and permit qualifications.

3.1 Qualifications. - A video lottery license or permit shall not be granted until the Commission is assured that the applicant satisfies all of the following qualifications.

3.1.1 The applicant for a video lottery license, only, must hold a valid racing license granted by the West Virginia Racing Commission under provisions of §19-23-1 and §19-23-8 of the West Virginia Code.

3.1.2 The applicant must be a person of good character, honesty, and integrity;

3.1.3 The applicant must be a person whose background, including criminal record, reputation, and associations does not pose a threat to the public interest of the State or to the security and integrity of the Lottery. Any person who has been convicted of any violation of W. Va. Code article 29-22, or of any crime related to theft, bribery, gambling or involving moral turpitude, will not be licensed or permitted in any capacity. The Commission shall revoke the license or permit of any person who is convicted of any such crime after to Commission has granted a license or permit.

3.1.4 - The applicant must be a person who demonstrates the business ability and experience necessary to establish, operate, and maintain the business for which a video lottery license or permit application is made.

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3.1.5 The applicant must be a person who demonstrates adequate financing for the business for which a video lottery license or permit application is made. The Commission shall consider whether financing is from a source that meets the foregoing qualifications, and is in an amount sufficient to assure the likelihood of success in the performance of the licensee's or permit holder's duties and responsibilities.

3.2 Individual qualifications must be established. - A video lottery license or permit shall not be granted to an applicant until the Commission is assured that each of the individuals listed satisfies the individual qualifications.

3.2.1 Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who in the opinion of the Commission has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

3.2.2 Each person associated with a non-corporate applicant:

3.2.2.1 Who directly or indirectly hold any beneficial or proprietary interest in the applicant; or

3.2.2.2 Who, in the opinion of the Commission, has the ability to control the applicant.

3.2.3 Key personnel, including any executive, employee, or agent, having the power to exercise a significant influence over decisions concerning any part of the applicant's business operation.

3.3 Applicant required to furnish information. - Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials required or requested by the Commission for purposes of determining qualifications for granting a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation required or requested by the Commission. The burden of proving qualification for any video lottery license or permit is on the applicant.

3.4 Waiver of liability. - Each applicant must accept all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication by a third party of any material or information requested by the Commission pursuant to action on an application.

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The applicant must expressly waive any and all claims against the Commission, the State of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

3.5 Oath or affirmation and attorney certification. - All application, registration, and disclosure forms and other documents submitted to the Commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before a notary public. If any forms or documents are signed by an attorney for the applicant, the signing shall constitute a certification by the attorney that the attorney has read the forms or documents and that, to the best of his knowledge, information, and belief, the contents of the forms and documents so signed are true; however, if any of the information is subsequently found to be untrue, the license or permit applied for will not be granted or, if the license or permit was granted prior to discovery of the untrue information, the license will be revoked.

3.6 Duty to provide accurate and material information. - Any applicant who fails to reveal any fact material to qualification or who submits information that is untrue or misleading as to a material fact of qualification, shall result in the denial or revocation of a video lottery license or permit, depending upon when such information is found to be untrue or misleading.

§ 179-3-4. Application process.

4.1 Form of application. - All applicants required to be qualified and licensed or permitted as manufacturers, retailers, service technicians, and validation managers must provide all information requested or required, and complete and return all of the forms provided by the Commission.

4.2 Submission of application. - All applications shall be submitted to the following address:

West Virginia Lottery
Security and Licensing Division
P.O. Box 2067
Charleston, WV 25327

4.3 Consideration of applications by Commission. - The Commission shall only consider complete applications. Applications are complete when the applicant has submitted the following:

4.3.1 All information required or requested by the Commission.

4.3.2 Completed and executed all forms and documents required or requested by the Commission; and

4.3.3 Payment of the application fees and costs.

4.4 Issuance of license. - The Commission may not issue the license or permit applied for until after the background investigations are concluded, all information has been reviewed and the Commission has formally consented to issuance. The Commission is required to make an affirmative determination that the applicant is qualified and the applicable license and/or permit fees are remitted prior to issuing the license.

4.5 Notice of incomplete application. - The Commission shall notify applicants if their application is incomplete and any such notification shall state the areas in which the application is deficient.

4.6 Notice of license or permit denial. - The Commission shall notify applicants in writing of denial for permit, licensure or machine approval and cite the reasons for its determination.

4.7 Procedure for review of license or permit denial. - Applicants may request a hearing before the Commission to review a license or permit denial. A request for hearing must be in writing, received by the Commission within ten days from the date of denial and otherwise in accordance with Section 179-3-13 of these regulations. The request for hearing must be signed by the applicant and state the applicant's reasons, including supporting documentation, for license or permit approval.

4.8 Hearing on review of denial by Commission. - A hearing to review a license or permit denial shall be heard by the Commission and shall be conducted in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

4.9 Fees, renewal fees and dates. - The following fees shall be paid annually by each licensed race track, or permitted manufacturer and service technician:

4.9.1 Manufacturer, \$ 1,000.

4.9.2 Service Technician, \$ 100.

4.9.3 Race Track, \$ 1,000.

4.9.4 Validation Manager, \$ 50.

The foregoing fees shall be paid at the time of license or permit issuance and when said license or permit is renewed on July 1 each year.

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4.10 Bonding. - An applicant for a license will, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount as established by the Commission. Any such bond shall be issued by a surety company authorized to transact business in West Virginia and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

4.11 Renewal of license and permits. - The Commission shall renew video lottery licenses and permits annually as of July 1; Provided, That each person seeking license or permit renewal submits the applicable renewal fee, completes the renewal forms provided by the Commission, and continues to meet the qualifications.

4.12 Notice of change affecting license or permit. - License and permit holders must immediately notify the Commission of any proposed change of ownership or any transaction relevant to license or permit qualification. Commission approval must be obtained prior to completion of the proposed ownership change or transaction in order for the license or permit to remain in effect.

§ 179-3-5. Enforcement.

5.1 Criteria for suspension, revocation, denial of license or permit renewal. - The Commission may suspend, revoke, or deny renewal of a license or a permit for any violation of these regulations or of the State Lottery law [W. Va. Code §§29-22-1 et seq.].

5.2 Hearing on suspension, revocation, denial of license or permit renewal. - A notice and hearing regarding suspension, revocation, or denial of license or permit renewal, shall be conducted by the Commission in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

5.3 Schedule of hearings. - Hearings by the Commission on suspension, revocation, or denial of license or permit renewal shall be conducted in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

§ 179-3-6. Duties of license and permit holders.

6.1 General duties of all video lottery license and permit holders. - The general duties required of all video lottery license and permit holders are as follows:

6.1.1 Promptly report to the Commission any violation or any facts or circumstances that may result in a violation of State or federal law and/or any rules or regulations as hereto adopted.

6.1.2 Conduct their respective video lottery operations

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in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of West Virginia, or reflect adversely on the security or integrity of the Commission.

6.1.3 Hold the Commission, the Director, and the State of West Virginia harmless from any and all claims that may be made against a licensee, the Commission, the State of West Virginia, or the employees of either, arising from the licensee's participation in or the operation of a State video lottery game.

6.1.4 Defend and pay for the defense of all claims that may be made against the Commission, the State of West Virginia, or the employees of either, arising from the license or permit holder's participation in or operation of a State video lottery game.

6.1.5 Assist the Commission to maximize revenues to the State of West Virginia.

6.1.6 Maintain all records required by the Commission.

6.1.7 Provide at the request of the Commission immediate access to all records and the physical premises of the business or businesses where the licensee's video lottery game activities occur, all such access to be for the purpose inspecting the licensee's activities and video lottery games, video lottery terminals and associated equipment.

6.1.8 Keep current in all payments and obligations to the Commission.

6.2 Duties of permitted manufacturers. - Following are the specific duties required of permitted manufacturers.

6.2.1 Manufacture terminals and associated equipment for placement in West Virginia in accordance with the specifications and procedures in Sections 179-3-8 and 179-3-9 of these regulations.

6.2.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed West Virginia race tracks.

6.2.3 Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery terminals purchased for placement in West Virginia.

6.2.4 Provide to licensed race tracks appropriate technical assistance and training in the service and repair of its video lottery terminals and associated equipment so as to assure the continued, approved operation and play of those video lottery terminals;

6.2.5 Obtain certification of compliance under the provisions of Part 15 of the FCC rules for all terminals placed in West Virginia.

6.2.6 Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation and placement of those terminals.

6.2.7 Attend all required meetings, seminars, and training sessions for the repair and maintenance of licensed video lottery terminals and associated equipment.

6.2.8 Notify the Commission of any recurring electronic or mechanical video lottery terminal malfunctions or other problems experienced in a particular approved video lottery terminal model.

6.2.9 Enter into service contracts under terms and conditions agreed upon by all parties, such contracts to be for the maintenance and repair of video lottery terminals and associated equipment placed at a licensed race track.

6.3 Duties of licensed race tracks. - Following are the specific duties required of all owners, managers, and designated employees of licensed race tracks.

6.3.1 Provide a secure premise for the placement, operation, and play of all video lottery terminals located at the licensed race track.

6.3.2 - Permit no person to tamper with or interfere with the approved operation of any video lottery terminal.

6.3.3 Assure that telephone lines from the Commission's central computer in Charleston, West Virginia to the video lottery terminals located at the licensed race track are at all times connected and prevent any person from tampering or interfering with the continuing operation of the lines.

6.3.4 Ensure that video lottery terminals are placed and remain as placed within the sight and control of the designated employee(s) of the race track.

6.3.5 Ensure that video lottery terminals are placed and remain as placed in specific areas of the licensed race track as approved by the Commission. Any relocation of a video lottery terminal or terminals at the track requires prior approval from the Commission.

6.3.6 Monitor video lottery terminals to prevent access to or play by persons who are under the age of 18 years or who are visibly intoxicated.

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6.3.7 Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals.

6.3.8 Extend no credit for video lottery terminal play.

6.3.9 Pay all credits upon presentment of a valid winning video lottery ticket or within the time frame prescribed in these regulations.

6.3.10 Exercise caution and good judgment in providing cash for checks presented for video lottery terminal play.

6.3.11 Report promptly to the manufacturer and Commission all of video lottery terminal malfunctions and notify the Commission of a manufacturer's failure to provide service and repair of such terminals and associated equipment.

6.3.12 Conduct advertising and promotional activities which shall be approved in advance in writing by the Director. Twenty-four (24) hours advanced notice is required and all advertising detail shall be in final proof stage.

6.3.13 Install, post, and display prominently at locations within or about the business premises signs, redemption information and other promotional material as may be required by the Commission.

6.3.14 Permit video lottery to be played only during those hours established and approved by the Commission.

6.3.15 Assume responsibility for the installation, operation, and payment of Commission approved telephone lines to provide direct communication between each licensed terminal and the Commission's central computer.

6.3.16 Maintain general liability insurance coverage for all video lottery terminals in an amount of at least two million (\$2,000,000) dollars per claim.

6.3.17 Promptly notify the Commission in writing of any breaks or tears to any logic unit seals.

6.3.18 Assume liability for lost or stolen money from the video lottery terminal.

§ 179-3-7. Accounting.

7.1 Commission to provide communications protocol data. - The Commission shall provide permit holding manufacturers, or manufacturers applying for permits, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the Commission's central computer when transmitting the auditing program information and

controls approved by the Commission.

7.2 Remittance of State's percentage of net terminal income. - Licensed race tracks shall remit to the Commission and within the required time periods the State's established percentage of all net terminal income.

- 7.2.1 The Lottery Commission shall be entitled to forty (40%) percent of net terminal income.
- 7.2.2 The licensed race track shall be entitled to sixty (60%) percent of net terminal income; this percentage is inclusive of the licensed lottery retail agent's statutory commission and the incentive bonus found in W.Va. Code §29-22-10, as well as certain shared operating expenses.

7.3 Remittance through electronic transfer of funds. - The State's percentage of net terminal income shall be remitted to the Commission through the electronic transfer of funds. Licensed race tracks shall furnish to the Commission all information and bank authorizations required to facilitate the timely transfer of moneys to the State Treasury. Licensed race tracks must provide the Commission 30 days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

7.4 Charge for late payment of insufficient funds payment. - Each licensed race track shall maintain in its account a balance sufficient to cover the State's percentage of net terminal income, such amount to be electronically transferred by the Commission on the established dates. Failure to maintain such balance may result in license suspension or disabling of terminals until such time as full payment of all amounts due and owing is completed. The insufficient fund charge shall be one hundred (\$100.00) dollars, per occurrence, and interest on the unpaid balance at a rate consistent with the amount charged for state income tax delinquency under West Virginia Code, Chapter 11, which said interest shall begin to accrue immediately.

7.5 Duty to notify of accounting discrepancies. - Each licensed race track shall keep accurate records of all income generated at each video lottery terminal. The Commission shall prepare and mail to the licensed race track a statement reflecting the net terminal income and the State's percentage of that amount prior to the date payment is remitted through the electronic transfer of funds. Each licensed race track must report to the Commission any discrepancies in net terminal income between the Commission's statement and each terminal's mechanical and electronic meter readings. The Commission is not responsible for resolving net terminal income discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement.

7.6 Settlement of accounts. - Until an accounting discrepancy is resolved in favor of the licensed race track, the Commission shall make no credit adjustments. For each video lottery terminal that reflects a discrepancy, the licensed race track shall submit to the Commission the maintenance log that includes current mechanical meter readings and the audit ticket that contains electronic meter readings generated by the terminal's software. If the meter readings and the Commission's records cannot be reconciled, final disposition of the matter shall be determined by the Commission. No electronic accounting meters may be cleared without a Commission employee present. Any accounting discrepancies that cannot be otherwise resolved shall be resolved in favor of the State.

7.7 Manual reporting and payment may be required. - Licensed race tracks shall mail and remit payment of the State's percentage of net terminal income if any of the following events occur:

7.7.1 The electronic transfer of funds is not operational;

7.7.2 The terminal is incapable of communicating with the Commissioner's central computer; or

7.7.3 Program modifications to the accounting software are necessitated due to recurring accounting discrepancies in the Commission's statement.

The Commission shall notify licensed race tracks when remittance by this method is required. The tracks shall report the amount of net terminal income per terminal and remit payment for the State's percentage of the total amount of net terminal income generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than 12:00 noon on the day when the payment would otherwise be completed through electronic funds transfer.

7.8 Request of reports. - Licensed race tracks may request additional reports on play transactions of their respective video lottery terminals and on other marketing information not considered confidential by the Commission. The Commission may charge a fee for the cost of producing and mailing any report other than the invoice statements.

7.9 Consent to examination of accounts and records. - Each licensee must consent in writing to the examination of all accounts, bank accounts, financial statements, and records in its possession, under its control or in which it has an interest, and it must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records, as determined necessary by the Commission

when conducting audits.

§ 179-3-8. General video lottery terminal requirements.

8.1 Video games authorized. - Video lottery terminals registered and approved by the Commission may offer only the types of video lottery games authorized by the Commission pursuant to game rules separately filed from time to time with the Secretary of State. A video lottery terminal may simulate the play of one or more of the authorized video games. The manufacturer must supply two copies of each game terminal illustration for the screen and keyboard, if applicable, as well as each game play method for Commission approval.

8.2 Application for approval of a video lottery terminal. - A manufacturer shall not sell or lease a video lottery terminal for placement at a licensed race track in the State unless the terminal has been approved by the Commission. Only permitted manufacturers may apply for approval of a video lottery terminal or associated equipment. The manufacturer must submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source codes and hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Commission for purposes of analyzing and testing the video lottery terminal or associated equipment.

8.3 Testing of video lottery terminals. - The Commission may require that two working models of a video lottery terminal be transported to the location designated by the Commission for testing, examination, and analysis.

8.3.1 The manufacturer shall pay all costs of testing, examination, analysis, and transportation of such video lottery terminal models. The testing, examination, and analysis of any video lottery terminal model may include entire dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The Commission may require that the manufacturer provide specialized equipment or the services of an independent technical expert to test the terminal.

8.3.2 The manufacturer shall pay transportation costs of two video lottery terminals to Lottery Headquarters. The Commission shall conduct an acceptance test to ensure terminal functionality and central system compatibility. If the video lottery terminal fails the Commission conducted acceptance test, the manufacturer shall make all modifications required by the Commission.

8.4 Report of test results. - After each test has been

completed, the Commission shall provide the terminal manufacturer with a report that contains findings, conclusions, and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with West Virginia Code article 29-22 or these regulations. Prior to approving a particular terminal model, the Commission may require a trial period not in excess of sixty (60) days for a licensed retailer to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the Commission. The Commission shall affix appropriate seals to each terminal during the test period.

8.5 Modifications to previously approved models. - The video lottery terminal manufacturer and retailer, together and individually, are responsible for the assembly and initial operation, in the manner approved and licensed by the Commission, of all video lottery terminals and associated equipment. The manufacturer and retailer shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a "Request for modification to an existing video terminal prototype" is made to the Commission; the Request must contain all appropriate information relating to the type of change, reason for change, and all documentation required, and the Commission must approve the request.

8.6 Conformity to prototype. - Each video lottery terminal approved for placement at a licensed race track must conform to the exact specifications of the video lottery terminal prototype tested and approved by the Commission. Any video lottery terminal which does not conform to the Commission approved prototype will be seized and destroyed by the Commission.

8.7 Operation of video lottery terminals. - Each video lottery terminal must at all times operate and play in accordance with the provisions of West Virginia Code article 29-22 or these regulations.

8.8 Confiscation and seizure of terminals. - Any video lottery terminal, or any video lottery terminal modifications not approved or not discovered by the Commission at the time of testing and licensing, which is in violation of West Virginia Code article 29-22 or these regulations, shall constitute reasonable cause for the Commission to seize and destroy all of the manufacturer's video lottery terminals in use within West Virginia that are in noncompliance.

If the Commission elects to seize any video lottery terminals, it shall determine the type and estimated number of lottery terminals not in compliance with West Virginia Code article 29-22 or these regulations. A notice and hearing regarding violations of said Article 29-22 or these regulations shall be conducted by the Commission in accordance with Section 179-3-14 of these

regulations. If seizure is effected prior to a hearing, a hearing must be conducted not less than 20 days from the date of seizure.

§ 179-3-9. Video lottery terminal hardware and software requirements.

9.1 Hardware specifications. - Video lottery terminals licensed for placement in West Virginia must meet the following hardware specifications.

9.1.1 Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

9.1.2 A surge protector must be installed on the line that feeds electrical power to the video lottery terminal. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all information required for a period of 180 days after power is discontinued from the terminal. The backup device shall be kept within the locked logic board compartment in the video lottery terminal.

9.1.3 An on/off switch that controls the electrical current used in the operation of the terminal and any associated equipment must be located in an accessible place within the interior of the video lottery terminal.

9.1.4 The operation of each video lottery terminal must not be adversely affected by any static discharge or other electromagnetic interference.

9.1.5 A minimum of one electronic or mechanical coin acceptor must be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one-dollar bills, five-dollar bills, ten-dollar bills, and twenty-dollar bills. The bill acceptors may be for any single bill or combination of bills in the denominations listed in this subsection. While approval letters and test reports of the coin and bill acceptors from other state or federal jurisdictions may be submitted, all coin and bill acceptors must be approved by the Commission prior to use on any video lottery terminal in this State.

9.1.6 All internal access to the device shall be controlled through a series of locks.

9.1.6.1 Access to the internal functions of the device shall be gained from a working front panel of the device.

9.1.6.2 Access from one locked area within the device to another shall not be allowed.

9.1.7 The main logic board(s) and software Eproms (computer chips that store memory) must be in a separate, locked and sealed area within the video lottery terminal.

9.1.8 The cash compartment must be contained in a locked area within or attached to the video lottery terminal.

9.1.9 No hardware switches, jumpers, wire posts, or any other means of manipulation may be installed that alter the pay tables or payout percentages in the operation of a game. Hardware switches may be approved by the Commission and installed on a video lottery terminal to control the terminal's graphic routines, speed of play, sound and other approved cosmetics.

9.1.10 Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact, legible copy in the video lottery terminal. The following information must be recorded on the ticket when credits accrued on the video lottery terminal are redeemed for cash:

- 9.1.10.1 The number of credits accrued;
- 9.1.10.2 Value of the credits in dollars and cents displayed in both numeric and written form;
- 9.1.10.3 Time of day and date;
- 9.1.10.4 Validation number; and
- 9.1.10.5 Any other information by the Commission.

9.1.11 A permanently installed and affixed identification plate must appear on the exterior of each video lottery terminal and the following information must be on said plate:

- 9.1.11.1 Manufacturer of the video lottery terminal;
- 9.1.11.2 Serial number of said terminal; and
- 9.1.11.3 Model number of said terminal.

9.1.12 The rules of play for each game must be displayed on the video lottery terminal face or screen. The Commission may reject any rules of play which are considered to be incomplete, confusing, or misleading. Based on the number of credits wagered, each video lottery game must display the credits wagered and the credits awarded for the occurrence of each possible win. A terminal may not allow more than \$2.00 to be wagered on a single game.

All information required by this subsection must be kept under glass or another transparent substance and at no time without Commission approval may stickers or other removable devices be placed on the video lottery terminal screen or face.

9.1.13 Equipment must be installed to enable the video lottery terminal to communicate with the Commission's central computer system, such communication to be accomplished by use of a communications protocol provided by the Commission to each permitted manufacturer and for the Commission approved information and control programs.

- 9.1.13.1 The Commission may elect to require each

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licensee to provide a central site computer to the Commission as a part of the licensing requirement at no cost to the Commission. The central site computer must meet all requirements and specifications established by the Commission.

9.1.14 Each video lottery terminal must have an electromechanical meter to indicate money inserted, credits paid, credits won, and credits played.

9.1.15 All video lottery terminals shall have an approved security system that will temporarily disable the gaming function of the terminal while opened.

9.2 Software requirements for randomness testing. - Each video lottery terminal must have a random number generator that will determine the occurrence of a specific card, number or stop. A selection process will be considered random if it meets the following requirements:

9.2.1 Chi-squared analysis. - This test is the sum of the squares of the difference between the expected result and the observed result. Each card, number or stop must satisfy the 99 percent confidence limit using the standard chi-squared analysis.

9.2.2 Runs test. - This is a mathematical statistic that determines the existence of recurring patterns within a set of data. Each card, number or stop must not produce a significant statistic with regard to producing patterns of occurrences. Each card, number or stop will be considered random if it meets the 99 percent confidence level with regard to the "runs test."

9.2.3 Correlation test. - Each card, number or stop position is independently chosen without regard to another card, number or stop within that game play. Each pair of card, number or stop positions is considered random if they meet the 99 percent confidence level using standard correlation analysis.

9.2.4 Serial correlation test. - Each card, number or stop position is independently chosen without reference to the same card or number position in the previous game. Each card or number position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

9.3 Software requirements for percentage payout. - Each video lottery terminal must meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal:

9.3.1 Video lottery games that are not affected by player skill shall pay out a minimum of 80 percent and no more than 95 percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory. For the video lottery game of keno, the

theoretical payout percentage requirements apply to each number of spots marked;

9.3.2 Manufacturers must file a request and receive approval by the Commission prior to manufacturing for placement in West Virginia video lottery terminals programmed for a payout greater than 92 percent of the amount wagered. Commission approval must be granted prior to applying for terminal testing. The Commission shall consider, but not be limited to the following factors when determining whether approval should be granted:

9.3.2.1 The number of video lottery terminals proposed for placement;

9.3.2.2 Market conditions;

9.3.2.3 Revenues in relation to net terminal income for both the State and private sector operations; and

9.3.3 Each terminal must have a probability greater than 1 in 17,000,000 of obtaining the maximum payout for each play.

9.4 Software requirements for continuation of video lottery game after malfunction. - Each video lottery terminal must be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. This rule does not apply if a video lottery terminal is rendered totally inoperable; however, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction must be returned to the player.

9.5 Software requirements for play transaction records. - Each video lottery terminal must at all times maintain electronic accounting, regardless of whether said terminal is being supplied with power. Each meter must be capable of maintaining a total of no less than eight digits in length for each type of information required to be recorded. The electronic meters must record the following information:

9.5.1 Total number of coins inserted. The meter must count the total number of coins that are inserted by the player or the coin equivalent if a bill acceptor is being used;

9.5.2 Number of credits wagered;

9.5.3 Number of credits won;

9.5.4 Credits paid out by a printed ticket voucher;

9.5.5 Number of times the logic area was accessed;

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9.5.6 Number of times the cash door was accessed;

9.5.7 Number of coins or credits wagered in the current game;

9.5.8 Number of coins or credits won in the last complete, valid video lottery game, commonly referred to as the win meter; and

9.5.9 Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected, commonly referred to as the credit meter.

No video lottery terminal shall have a mechanism by which an error will cause the electronic accounting meters to automatically clear. Clearing of the electronic accounting meters shall only be completed after notification of and approval by the Commission. All meter readings, both before and after the electronic accounting meter is cleared, must be recorded in the presence of a Commission employee.

§ 179-3-10. Transportation and registration of video lottery terminals.

10.1 Transportation of video lottery terminals into West Virginia. - A manufacturer a video lottery terminal into West Virginia shall provide the Commission in writing at time of shipment the following information on forms required by the Commission:

10.1.1 The full name, address, and permit number of the person or entity shipping the video lottery terminals;

10.1.2 The method of shipment and the name of the carrier, if any;

10.1.3 The full name, address, and license number of the licensed race track to whom the video lottery terminals are being sent and the destination of said terminals, if different from the address;

10.1.4 The number of video lottery terminals in the shipment;

10.1.5 The serial number of each video lottery terminal in the shipment;

10.1.6 The model number and description of each video lottery terminal in the shipment; and

10.1.7 The expected arrival date of the video lottery terminals at their respective destination within West Virginia.

10.2 Receipt of video lottery terminals in West Virginia. - A licensed race track which purchases or leases a video lottery terminal shall, upon receipt of said terminal, provide the Commission with the following information on forms required by the Commission:

10.2.1 The full name, address, and license number of the track receiving the video lottery terminal;

10.2.2 the full name, address, and permit number of the manufacturer from whom the video lottery terminal was received;

10.2.3 The serial number of each video lottery terminal received;

10.2.4 The model number and description of each video lottery terminal received;

10.2.5 The expected date and time of video lottery terminal arrival; and

10.2.6 The expected date and time of video lottery terminal installation.

If the video lottery terminal will not be placed in operation, the licensed race track must notify the Commission of the address where said terminal is warehoused. At the time such terminal is removed from inventory and transported to another location within the State, the track must comply with the foregoing requirement by providing the required information to the Commission.

10.3 Transportation of video lottery terminals between locations in the State. - Any person transporting a video lottery terminal from one location to another in the State, other than for repair or servicing purposes, shall notify the Commission in writing prior to the transportation of the said terminal and provide the following information on forms required by the Commission.

10.3.1 The full name, address, and license number of the person or entity transporting the video lottery terminal;

10.3.2 The reason for transporting the video lottery terminal;

10.3.3 The full name, address, and license number of the person or entity where the video lottery terminal is currently located;

10.3.4 The full name, address, and license number of the person or entity to whom the terminal is being sent and the destination of the video lottery terminal if it is different from

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the address;

10.3.5 The serial and model number of the video lottery terminal;

10.3.6 The video lottery terminal license number, if affixed;

10.3.7 The manufacturer of the video lottery terminal; and

10.3.8 The expected date and time of video lottery terminal installation or reinstallation.

Section 10.3 does not apply to the movement of video lottery terminals within the same location. Movements within the licensed race track are governed by sections 6.3.5 and 12.1.4 of this regulation.

10.4 Transportation of video lottery terminal out of West Virginia. - Any person shipping video lottery terminals out of the State shall notify the Commission in writing prior to the shipment and provide the following information on forms required by the Commission:

10.4.1 The full name, address, and license or permit number of the person or entity shipping the video lottery terminals;

10.4.2 The method of shipment and the name of the carrier, if any;

10.4.3 The full name and address of the person or entity to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

10.4.4 The serial number of each video lottery terminal being shipped;

10.4.5 The model number and description of the video lottery terminal being shipped;

10.4.6 The video lottery terminal license number, if affixed;

10.4.7 The manufacturer of the video lottery terminal being shipped; and

10.4.8 The expected date and time of the shipment.

10.5 West Virginia Lottery Commission Control Number is required on video lottery terminals. - Each video lottery terminal

placed in operation in West Virginia must have a Commission registration decal, with the video lottery terminal registration control number placed thereon, permanently affixed thereon prior to video lottery terminal becoming operational. No person other than authorized Commission personnel may affix or remove a registration control number. The placement of the Commission decal represents that the terminal has been registered, inspected, and approved for operation in West Virginia. Manufacturers and licensed race tracks must make video lottery terminals and associated equipment available for inspection by the Commission. No terminal may be transported out of the State until authorized Commission personnel have removed the Commission registration control number.

§ 179-3-11. Maintenance of video lottery terminal.

11.1 Training in terminal maintenance required prior to placement. - No video lottery terminal may be placed in operation in West Virginia until the manufacturer provides sufficient and appropriate training in the service and repair of each video lottery terminal model approved, and the service technicians complete such training.

11.2 Manufacturers required to provide training. - Each permitted manufacturer shall provide training in the service and maintenance of its video lottery terminals approved for placement in West Virginia. Manufacturers must submit to the Commission the following information on each training program conducted in West Virginia:

11.2.1 An outline of the training curriculum;

11.2.2 A list of the instructors and their qualifications;

11.2.3 Instructional materials; and

11.2.4 The time, dates, and location of the training programs.

11.3 Availability of training. - Manufacturers shall notify all licensed race tracks who have purchased or leased their video lottery terminals of all scheduled training programs. Training programs must be scheduled at convenient locations and times within West Virginia to assure attendance and direct participation. Manufacturers must provide appropriate subsequent training programs and inform licensed race tracks of new developments in the service and repair of its video lottery terminals.

11.4 Reports and certificates of training programs. - Manufacturers shall maintain a list of the names of all service

technicians who attend and successfully complete each training program. The list must be retained for a period of two years and made available upon request by the Commission. The manufacturer shall issue a training certificate to each person upon successful completion of the testing program. The certificate must show the name of the person who completed the training program; the date and location of the training program, and the manufacturer may require a test to determine successful completion of the training program requirements. Technicians who successfully complete this training are then eligible and may make application for a technician's permit from the Commission. A service technician cannot conduct maintenance/service on any video lottery terminal or associated equipment unless the Commission has issued a permit to the service technician.

11.5 Service technicians required to have training in the service and repair of video lottery terminals. - Each service technician(s) must demonstrate the possession of appropriate experience and knowledge in the service and repair of video lottery terminals and each must attend and complete the training provided by the manufacturer for each video lottery terminal. Each manufacturer must file with the Commission the following information within two weeks after the completion of a training program:

11.5.1 The name of each service agent and each employee who attended and completed the training program;

11.5.2 The name of the manufacturer offering the course;

11.5.3 The manufacturer's video lottery terminal models on which training for service and repair was provided;

11.5.4 The date and location of the training program; and

11.5.5 Copies of the certificates of completion.

11.6 Terminals to be maintained in the condition approved. - All video lottery terminals or associated equipment must be serviced and maintained in the manner and condition approved by the Commission.

11.7 Maintenance log forms required. - A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person, including lottery personnel, who gains entry into any internal space of a video lottery terminal must sign the log, indicate the time and date of entry, indicate the mechanical meter readings, and list the areas inspected or repaired. The maintenance log forms must be retained by retailers for a period of three years from the date of the last entry. The maintenance logs must be available upon request for inspection by the Commission.

11.8 Licensed race tracks required to furnish keys to video lottery terminals for inspection purposes. - Licensed race tracks must provide the Commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. A logic box seal will be provided by the Commission. It will be appropriately affixed by the Commission to the seal the video lottery terminal logic unit. The Commission may, at any time, without advance notice, inspect any video lottery terminal or device.

11.9 Notification of repairs to the logic area. - Any repairs to the logic board, or circuitry within the logic area, shall only occur when authorized Commission personnel are present and observe the accomplishment of such repairs. The logic box seal shall only be broken by authorized Commission personnel. Each service technician must also submit a written report within twenty-four hours after repairs are completed. If a logic board is replaced, only a Commission authorized logic board may be installed, the new logic box seal must be properly installed by Commission personnel, and the report must include the serial number of the replacement board and the new logic box seal number.

11.10 Notification of broken seals on logic board. - The software Eproms on the logic board of each video lottery terminal shall be inspected by the Commission prior to sealing the logic box. Licensed race tracks or permit holders must inform the Commission in writing of any damage to in the logic box seal noticed during routine maintenance checks. Any damage, tears or breaks in the logic box seal discovered by Commission personnel will result in the video lottery terminal immediately being made inoperable, such condition to continue until a full investigation by the Commission is completed and the damage, tears or breaks satisfactorily determined to not be the result of unauthorized activities by any licensed or permitted person.

§ 179-3-12. Location and number of video lottery terminals.

12.1 Location of terminals. All video lottery terminals in licensed race tracks must be physically located as follows:

12.1.1 The area(s) shall be continuously monitored through the used of a Closed Circuit Television System (CCTV). The system must be capable of recording activity for a twenty-four (24) hour period and shall be approved by the Commission prior to installation. All video tapes must be retained for a period of at least thirty (30) days, or as directed by the Commission.

12.1.2 In an area that ensures public access to the video lottery terminals is restricted to persons legally entitled by age to play video lottery games.

12.1.3 Initial locations for and number of video lottery terminals require prior approval from the Commission.

12.1.4 Any relocation of video lottery terminals requires prior approval from the Commission.

12.1.5 No operating video lottery terminals may be located in any building or structure which is not identified in the licensee's horse or dog race track construction permit on file with the West Virginia Racing Commission under provisions W. Va. Code § 19-23-18(a)(8).

12.2 Security

12.2.1 Security personnel shall be assigned to each location where video lottery terminals are in operation. Security personnel may include designated representatives, managers, or other persons employed by the licensee, or independent licensed and bonded security guards.

12.2.2 Each license holder shall retain a sufficient number of security personnel to provide for safe and legal operation of the facility and the safety and well-being of the patrons of each facility. In the event the Commission determines that an unsafe situation exists for patrons, the Director may order that the license holder provide additional security necessary to correct the situation. A license holder who fails to comply with such an order may be subject to suspension of its license or may have its video lottery terminals disabled.

§ 179-3-13. Payment of credits.

13.1 Payment of credits. - No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

13.1.1 It is presented on a fully legible, valid printed ticket on paper approved by the Commission, that contains the information as required;

13.1.2 It must not be mutilated, altered, unreadable, or tampered with in any manner;

13.1.3 It must not be counterfeit in whole or in part;
and,

13.1.4 It has been presented by a person authorized to play as indicated under W. Va. Code § 29-22-11 and these regulations.

13.2 Method of payment. - Each licensed race track shall designate employees authorized to redeem tickets during the business hours of operation. Credits shall be immediately paid in cash, or by check when a player presents a ticket for payment meeting the requirements of this Section 179-3-13. No credits may be paid in tokens, chips, or merchandise.

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13.3 Restrictions on payment of credits. - Licensed race tracks may only redeem tickets for credits awarded on video lottery terminals located on its premises. A ticket must be presented for payment no later than one hundred eighty (180) days after the date the ticket was printed. The Commission, and the State of West Virginia, are not liable for the payment of any credits on any video lottery tickets.

13.4 Redeemed tickets required to be defaced. - All tickets redeemed by a licensed retailer must be marked or defaced in manner that prevents any subsequent presentment and payment.

13.5 Liability for video lottery terminal malfunction. - The Commission, and the State of West Virginia, are not responsible for any video lottery terminal malfunction that cause credit to be wrongfully awarded or denied to players. The licensed race track is solely responsible for any wrongful award or denial of credits.

§ 179-3-14. Hearing and Appeal Procedure.

14.1 Order refusing license or permit; suspending or revoking same. - If the Commission refuses to issue a license or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect and mail by certified mail, return receipt requested, a copy of said order to the applicant, or the license or permit holder, or serve the same as provided for the service of legal process in accordance with the West Virginia Rules of Civil Procedure.

14.2 Petition for hearing. - Any applicant, or license or permit holder, as the case may be, adversely affected by such order, shall have the right to a hearing thereon before the Commission or a person designated as hearing examiner: Provided, That a petition in writing for such a hearing is served upon the Commission within ten (10) days following the receipt by such applicant, or license or permit holder of said copy of said order.

14.3 Petition requirements. - The petition for a hearing is to be in writing with an original and one (1) copy. It shall be complete in itself so as to fully state the issues. No telegram, telephone call, letter or similar communication will be regarded as a petition. The petition must contain the following:

14.3.1 A clear and concise assignment of each error which the petitioner alleges to have been committed by the Commission in the determination of its refusal to issue a license or permit, or its suspension or revocation of a license or permit, with each assignment of error being shown in separately numbered paragraphs.

14.3.2 A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

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- 14.3.3 A prayer setting forth the relief sought.
- 14.3.4 The signature of the petitioner or its officers.
- 14.3.5 A verification by the petitioner.

14.4 Form for petition. - A petition for hearing shall be in the form set forth below.

PETITION FOR HEARING

To: West Virginia
Lottery Commission
Charleston, WV

(For Commission Use Only)
Docket No. _____
Date of Refusal to License or
Permit, or Order of
Suspension or Revocation

Whether Refusal to License or
Permit, or Suspension or
Revocation

In the Matter of: Petitioner's Business Name

Petitioner's Lottery License or Permit No.

Address

The above named person against whom the State Lottery Commission has issued an order of (License or Permit Refusal, Revocation or Suspension), and in support of this petition for hearing, avers as follows:

First: Your petitioner admits as true and correct all of the determinations made by the Commission and set forth in the above order and basis thereof, except the following: (Specify here each error which the petitioner alleges to have been made by the Commission.)

Second: (Set forth clear and concise statements of fact upon which the petitioner relies as sustaining the assignment of error.)

Wherefore, your petitioner prays (insert relief sought, i.e., this order be set aside).

State of _____) Business Name _____)
SS Signature of Affiant _____)
County of _____)
Title _____, being duly

sworn according to law, deposes and says that the facts alleged in this petition, including all sheets attached hereto, are true and affiant is the petitioner or is duly authorized to represent the petitioner.

BY _____

Sworn to and subscribed before me this _____ day of _____, 19__ at _____

My commission expires _____

Notary Public

14.5 Hearings - cost deposit. - The person demanding a hearing shall give security for the cost of said hearing in the amount of three hundred dollars (\$300) and said cost deposit shall be advanced by certified check, cashier's check or money order and shall accompany the petition demanding a hearing.

14.6 Subpoenas and subpoenas duces tecum. - In all hearings held under W. Va. Code article 29-22 and these regulations, the evidence of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Such subpoenas or subpoenas duces tecum may be issued at the request of the Lottery Commission, the same to be issued by either the Commission or its duly appointed hearing examiner.

14.6.1 Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person twenty-one (21) years of age or older or by registered mail, but a return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail.

14.6.2 All subpoenas and subpoenas duces tecum will be issued in the name of the Lottery Commission, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the insistence of the Lottery Commission are to be the responsibility of such Commission. Any person who serves any such subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this State, and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of West Virginia.

14.6.3 All such fees shall be paid by the Lottery

Commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the Commission.

14.6.4 All such fees related to any subpoenas or subpoena duces tecum issued at the insistence of a licensee shall be paid by the licensee who asks that such subpoena or subpoena duces tecum be issued, such payment to be made out of the hearing deposit.

14.6.5 All requests by the licensee or the Commission for subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

14.6.6 Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it was issued by a circuit court of the State, and shall appear as witness and/or produce such books, records or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the Commission, shall compel obedience by attachment proceeds for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

14.7 Stay of suspension or revocation order. - The service of a petition for hearing upon the Commission shall not operate to suspend the execution of any revocation or suspension of a video lottery license with respect to which a hearing is being demanded.

14.8 Hearing date. - The commission shall set a date for any hearing demanded and notify the person demanding such hearing of the date and time of said hearing, which said hearing shall be held within thirty (30) days after receipt of said demand.

14.9 Place of hearing. - Hearings will be held in Charleston, West Virginia, unless the Commission determines otherwise.

14.10 Continuances. - Hearings will not be delayed by a motion for continuance, unless it is made no later than ten (10) days before the date set for the hearing and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commission deems adequate.

14.11 Absence of petitioner, counsel or his representative. - The absence of the petitioner, his legal counsel or his representative at a hearing, after service of notice of time, place and date, shall not be the occasion for delay or continuance. The hearing shall proceed and the case be regarded as having been submitted for decision on the part of the absent petitioner or petitioners.

14.12 Hearing. - The Lottery Commissioner may designate an examiner to conduct the hearing.

14.12.1 The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representatives' authority must be presented to the satisfaction of the Commission.

14.12.2 The petitioner, or his duly authorized representative, may, with the approval of the Commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Such waivers and agreements are to be in writing or upon the record.

14.13 Argument and briefs. - Petitioners will be given an opportunity for argument within the time limits fixed by the Commission following submission of evidence. The Commission, upon request of the petitioner, will accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing date.

14.14 Evidence admissible at hearing. - The Commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law relating to communications and topics. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The Commission may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

14.15 Record of proceedings. - There shall be a record made at all hearings held pursuant to W. Va. Code article 29-22 and these regulations.

14.16 Commission's decision. - After the conclusion of the hearing and within ten (10) days of receipt of the transcript thereof, or after receipt of briefs submitted in lieu of argument, the person designated by the Commission as hearing examiner shall prepare a recommended decision supported by findings of fact and conclusions of law affirming, modifying or vacating the earlier order of the Commission. Thereafter, the Commission, within ten (10) days of receipt of such recommended decision, shall either accept or reject such recommended decision, and if it shall accept such decision, it shall cause the Director to sign and acknowledge

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the same as its own after having reviewed the transcript and all exhibits attached and affixed thereto, and if it shall reject the same, it shall within ten (10) days of receipt of such recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the order signed by the Director shall be final unless vacated or modified upon judicial review thereof. A copy of said order shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

14.17 Appeal to circuit court. - An appeal by the applicant or license or permit holder may be taken to the Circuit Court of Kanawha County, West Virginia, or with the judge thereof in vacation, if filed no later than thirty (30) days after the date upon which the petitioner received notice of the final order of the Lottery Commission.

14.18 Supreme Court of Appeals. - An appeal may be taken by the applicant, or the license or permit holder, or by the Lottery Commission from the final judgment of the circuit court to which the applicant or licensee has appealed, the same to be taken in the manner and within the time provided by law for civil appeals generally.

§ 179-3-15. Severability.

The sections and subsection of these regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations and all other sections shall remain in full force and effect: Provided, That such remaining portions are not determined to be inseparable, and to this end these regulations are declared separable.